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## *Table of Contents*

**Katerina Shapkova Kocevsk**

PUBLIC EXPENDITURE ON EDUCATION AND ECONOMIC GROWTH: EVIDENCE FROM NORTH MACEDONIA, 22

**Miguel Ángel Benedicto Solsona, Marcin Roman Czubala Ostapiuk**

RETHINKING STRATEGIC AUTONOMY IN TIMES OF NEXT GENERATION EU: NEW DIGITAL AGENDA, 35

**Hikmet Mengüaslan, Sadullah Çelik**

WHAT DOES "BIG DATA" TELL? A NETWORK ANALYSIS APPROACH TO THE JUSTICE AND DEVELOPMENT PARTY'S  
ROLE PERFORMANCE IN THE MIDDLE EAST BETWEEN 2015 AND 2020, 48

**Nippun Gupta, Bawa Singh, Aslam Khan, Jaspal Kaur**

FACTORING THE SMART POWER IN THE INDIA-EU ENGAGEMENTS: A SCOPING REVIEW, 73

**D. Ananda**

ELECTORAL BONDS: A PERIL TO DEMOCRACY AND TRANSPARENT ELECTIONS IN INDIA, 89

**Sylvester Ngome Chisika, Chunho Yeom**

IMPROVING WOMEN'S EMPOWERMENT THROUGH DEVOLUTION IN KENYA: THE CASE OF NAIROBI AND  
KAKAMEGA COUNTIES, 101

**Mohammad Reyaz**

INDIA@75: ASSESSING INDIA'S USE OF SOFT POWER AS A FOREIGN POLICY INSTRUMENT, 117

**Artan Hajdini, Lum Collaku, Safet Merovci**

EFFECT OF CORRUPTION ON FOREIGN DIRECT INVESTMENT INFLOWS IN COUNTRIES OF  
THE WESTERN BALKANS, 130

**Samed Karovic, Aleksandra Rankov, Sinisa Domazet, Jelena Jesic**

POLICY OF RAISING THE CAPACITY OF LOCAL SELF-GOVERNMENTS FOR MANAGEMENT OF EMERGENCIES, 144

**Ufuoma Veronica Awhefeada**

THE ROLE OF REGIONAL HUMAN RIGHTS INSTITUTIONS IN TIMES OF ARMED CONFLICTS IN AFRICA, 159

**Emad A. Ayasreh**

HUMANITARIAN DIPLOMACY STRATEGY FOR SYRIAN REFUGEES AND ITS EFFECT ON  
JORDAN'S FOREIGN POLICY, 175

**Jonathan Andrew Stewart Honig**

MILITARY SANCTIONS: THE WAR ON TERROR AND THE CASE OF UZBEKISTAN, 189

**Mentor Gashi, Ramadan Beqiri**

THE IMPACT OF PUNISHMENT, BUDGET SPENDING, AND SOCIAL STIGMATIZATION ON FISCAL EVASION: THE CASE  
OF KOSOVO, 204

**Pratyush Paras Sarma**

PROCESS TRACING AND PROFESSIONALIZATION OF POLITICAL CAMPAIGNS, 220

**Muhamet J. Spahiu, Esat A. Durguti**

EXAMINATION OF DECISION-MAKING STRUCTURES' PERCEPTIONS OF COMPONENTS ON THE INFLUENCES OF  
SME SUCCESS, 236

**Mohd. Agoes Aufiya**

FACTORS IN CONSTRUCTING INDONESIA'S PERSPECTIVES ON THE INDO-PACIFIC, 253

**Valerii Sokurenko, Oleksandr Morhunov, Serhii Ablamskyi**

ASSESSING THE SCOPE OF LEGAL IMMUNITY IN MODERN LEGAL SCIENCE: THE NEED FOR QUESTIONING UNDER UKRAINIAN LAW, 265

**Baidyanath Mukherjee, Meera Mathew**

GLOBAL CLIMATE CHANGE GOVERNANCE: A RETHINKING, 277

**Paiman Ahmad, Bosede Ngozi Adeleye, Elena Tilovska-Kechedji**

THE EU AS A GLOBAL ACTOR IN SUSTAINABILITY POLICY: ANALYZING THE EU'S LIMITED BUT POTENTIAL INFLUENCE IN IRAQ AND SYRIA, 289

**Rossen Koroutchev**

THE EXPLOSIVE UKRAINIAN MIGRATION DUE TO THE RUSSIAN ARMED CONFLICT IN 2022: THE CASE OF BULGARIA, 303

**Elton Tota, Gjon Culaj**

OPEN BALKAN INITIATIVE: A CONTESTED ISSUE IN THE EU MEMBERSHIP PERSPECTIVE, 312

**Prabhpreet Singh, Driton Kuqi, Vijaylaxmi Sharma**

REGULATING FAKE NEWS IN TRANSNATIONAL JURISDICTION: A COMPARATIVE STUDY OF BRAZIL AND ARGENTINA, 325

**Vo Minh Hung, Nguyen Tuan Binh, Tran Xuan Hiep, Bui Thi Thao**

US-CHINA RIVALRY IN SOUTHEAST ASIA REGION: A STUDY ON THE SOUTH CHINA SEA CASE, 336

**Dorajet Imeri, Abdula Azizi**

STRUCTURAL AND NON-STRUCTURAL OBSTACLES IN THE PROCESS OF RECOGNITION OF INDEPENDENCE OF KOSOVO: 2008-2021, 352

**Oleh Poshedin, Kateryna Kashchuk**

THE INFLUENCE OF THE DECOMMUNIZATION POLICY ON THE FORMATION OF UKRAINIAN NATIONAL IDENTITY, 364

**Nataliia Khoma, Maiia Nikolaieva**

JAPANESE-RUSSIAN-UKRAINIAN GEOPOLITICAL TRIANGLE: MUTUAL INFLUENCES OF THE PARTIES, 374

**M Jashim Uddin, Raymond Kwun-Sun Lau**

RULES-BASED INTERNATIONAL ORDER AND US INDO-PACIFIC STRATEGY: WHAT DOES IT MEAN FOR CHINA'S BRI?, 386

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# PUBLIC EXPENDITURE ON EDUCATION AND ECONOMIC GROWTH: EVIDENCE FROM NORTH MACEDONIA

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**Abstract:** *In this paper, we studied the impact of public education expenditure on GDP per capita in North Macedonia from 1991 to 2020. The main questions we examined were: 1) What is the relationship between public education expenditure and GDP per capita in the country in the short run?; 2) Does a long-term relationship between the aforementioned variables exist?; and 3) What are the policy implications? This research was based on the Auto-Regressive Distributed Lag (ARDL) model, originally developed by Pesaran et al. (2001). The empirical estimations produced interesting findings. In the short run, the relationship between public spending on education and GDP per capita in North Macedonia was negative and statistically significant. The long-term relationship between the variables remained negative but statistically insignificant. These results were robust and consistent with results from earlier empirical studies. The results suggested that government expenditures on education did not contribute to economic growth in North Macedonia in the analyzed period, ceteris paribus. We concluded that, from a public policy standpoint, intervention in the education system's financing is necessary to facilitate the transformation of education expenditures into productive human capital and enhance the nation's economic development.*

**Keywords:** *Public Education Expenditure; GDP Per Capita; North Macedonia; ARDL*

## INTRODUCTION

Economic theory has long recognized the role of human capital in economic development (Romer 1986; Mankiw et al. 1992; Barro and Sala-i-Martin 2004). Schultz (1961) and Becker (1964) defined human capital as the set of knowledge, skills, competencies, and abilities that are embedded in persons and that individuals develop through time via training, education, job experience, medical treatment, and migration. Human capital can be general or specific depending on who benefits from it (Becker 1962; Lazear 2009). Specific human capital exists when the education and training of the worker are beneficial only for one company. General human capital is knowledge, skills, competencies, and abilities that benefit the individual at every company. Another approach is to categorize human capital into three separate categories regarding the nature of activities it includes. Thus, human capital can be in the form of education, health, and experience and can be acquired through better education, higher health, and new learning (Ogundari and Awokuse 2018).

Previous empirical studies on the relationship between education and economic growth confirm the relationship between these variables. Education has been regarded as an important growth-stimulating factor. The benefits of schooling and education exist not only on an individual level but also for the economy. Individuals' knowledge, predispositions, and skills improve due to investment in education. It also increases the individuals' capacity to innovate

and create new solutions. In a globalized world, education is critical for delivering the highly trained human capital required for job development, economic progress, and individual and societal success (Pegkas and Tsamadias 2014). The modern growth theory (Lucas 1988; Barro 1996) states that education is a factor of production along with labor and capital.

In certain cases, the multifaceted impact of education on economic growth has resulted in allocating a considerable amount of the government budget to education. Sweden had the greatest level of public investment in education as a proportion of GDP (7.1 percent), followed by Denmark (6.4 percent), Belgium (6.3 percent), and Finland (6.1 percent). The information is for the year 2019. In the same year, the remaining EU nations' public expenditures on education ranged from 3.2 percent (Romania) to 5.4 percent (France). Norway and Iceland have relatively high education spending to GDP ratios, 7.1 percent and 6.5 percent, respectively, among non-EU member countries (EUROSTAT2022).

According to another analysis of education expenditures in 36 OECD nations in 2018, the average overall expenditures on education institutions equaled 4.9 percent of GDP (National Center for Education Statistics 2022). Among the countries with the highest total expenditures on education institutions as a percentage of GDP are Chile (6.6 percent), Israel (6.2 percent), New Zealand (6.2 percent), the United Kingdom (6.1 percent), and the United States (6.0 percent). Ireland and Luxembourg had the lowest overall education expenditures as a percentage of GDP (both 3.3 percent), followed by Lithuania (3.4 percent), the Slovak Republic and Greece (both 3.7 percent), and Hungary (3.3 percent).

This research examines the relationship between public education spending and economic growth in the Republic of North Macedonia. Compared to other EU member nations, the Republic of North Macedonia invests a low portion of its central government budget in education as a percentage of GDP. For example, overall public education spending in 2020 was 3.3 percent of GDP, rising to 3.76 percent in 2021. The country's education expenditures are substantially below the EU (5 percent of GDP) and OECD average levels (4.9 percent of GDP) (European Commission, Directorate-General for Neighborhood and Enlargement Negotiations 2022, 88).

The main questions we aim to answer in our study are 1) What is the relationship between public education expenditures and GDP *per capita* in the country in the short run? 2) Is there a relationship between the variables mentioned above over the long term? 3) What does this mean for the Republic of North Macedonia's spending on education in terms of public policy?

The analysis covers the 1991-2020 period. The preliminary findings of our work indicate that the relationship between public expenditures on education and economic growth in the Republic of North Macedonia is negative. The result is statistically significant in the short term but statistically insignificant in the long term.

## LITERATURE REVIEW

The literature on education expenditure focuses mainly on the impact of public expenditures for education on economic growth. The results of these previous studies are not unanimous, and they generate different conclusions depending on the selected countries,

periods, and model specifications. Most studies emphasize the positive relationship between education expenditures and economic prosperity. However, some previous works prove the opposite relationship, offering statistically significant evidence that higher public education spending leads to lower growth rates.

Mallick, Das, and Pradhan (2016) examine the relationship between the expenditure on education and economic growth in selected 14 major Asian countries by using balanced panel data from 1973 to 2012 (Bangladesh, China, Hong Kong, India, Japan, Nepal, Pakistan, Malaysia, the Philippines, Saudi Arabia, Singapore, Sri Lanka, Thailand, and Turkey). They discovered the existence of long-run equilibrium relationships between expenditure on education and economic growth in all the countries. Further, the authors revealed a positive and statistically significant impact of education expenditure on the economic development of all 14 Asian countries. Moreover, this work considers the education sector as one of the important ingredients of economic growth in all 14 major Asian countries. It suggests strategies for its prioritization in order to achieve long-term economic development.

Another study examines the impact of public education expenditures on GDP *per capita* in two economies - Tunisia and Morocco - during the 1980-2015 period (Ifa and Guetat 2018). The authors used an ARDL model to estimate the relationship between the variables. The results of this study are mixed. In the short run, the relationship between public spending on education and GDP *per capita* in Morocco is positive, while it is negative in Tunisia. However, in the long run, a positive relationship is confirmed in both countries.

Ogundari and Awokuse (2018) estimated a dynamic model based on the system-generalized method of moments (SGMM) and analyzed balanced panel data covering 35 countries from Sub-Saharan Africa during the 1980-2008 period. The authors use two measures of human capital: health and education. Their results show that education and health positively impact economic growth, although health contributes more than education. Moreover, the results reveal that the impact of government education expenditures on economic growth is positive but statistically insignificant.

The positive relationship between education expenditures and economic growth is also confirmed in eight European Union countries (Dudzevičiūtė, Šimelytė, and Liučvaitienė 2017). Some studies examine the relationship between expenditures at different levels of education (primary, secondary, or tertiary) and economic growth. One recent study confirms one-way short-run causal relationships running from higher education expenditure to GDP in Croatia (Radić and Paleka 2020).

Kiran (2014) discovers a co-integrating relationship between educational expenditures and economic growth in eleven countries in Latin America during the period 1970–2009. He uses the co-integration test procedure in the presence of two unknown structural breaks.

Iheanacho and Nwaogwugwu (2021) discover that the ratio of recurrent education expenditures to total expenditures, the ratio of total capital education expenditure to total expenditure, and inflation have positive relationships with economic growth in Nigeria during the period 1985-2019. The ratio of public education expenditure to total expenditure indirectly influences economic growth in the country. In the long run, only the ratio of recurrent education expenditures to total expenditures Granger causes economic growth. They use different

techniques to examine this relationship, including auto-regressive distributed lag co-integration, error correction mechanism, and Granger causality tests.

Dao (2012), by using two samples of 28 developing economies, examines the relationship between GDP *per capita* growth and public expenditure. Their results suggest that GDP *per capita* growth is dependent upon the growth of *per capita* public health expenditure in the GDP, the growth of *per capita* public spending on education in the GDP, population growth, the growth of the share of total health expenditure in the GDP, and the share of gross capital formation in the GDP.

Interesting findings are presented in a study of the link between education expenditure and growth in Côte d'Ivoire (Kouton 2018). The analysis refers to the period from 1970 to 2015. The study provides evidence of a negative and significant long-term effect of government education expenditure on economic growth for the abovementioned period. Moreover, government education expenditure has a non-significant positive effect on economic growth in the short term. The results show a unidirectional causal relationship between the two variables, running from education expenditure to economic growth.

Some research does not prove a statistically significant link between education expenditure and growth. For example, Karaçor et al. (2017) found that education expenditure has not affected GDP in selected 19 OECD countries using panel data estimation (fixed effect models) from 1998 to 2012. Coman, Lupu, and Nuta (2022) are exploring the impact of public education spending on economic growth in Central and Eastern Europe from 1990 to 2020. By using the ARDL model with structural break, they discovered that in some Eastern European countries (Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, and Latvia), there are long-term inter-conditioning relationships between education spending and GDP, with results on the short term being positive or negative. However, there is no long-term relationship between education spending and economic growth in some countries (Lithuania, Poland, Romania, Slovakia, and Slovenia).

Finally, we have identified literature that aims to understand the mechanisms of the impact of public education expenditure on growth. For example, Annabi, Harvey, and Lan (2011), using an overlapping generations model in Canada, conclude that the impact of public expenditures on education depends on their efficiency and the distortions implied by alternative tax instruments. Blankenau and Simpson (2004) explore this expenditure-growth relationship in an endogenous growth model context. They found that the positive direct effect of public education spending on growth can be diminished or even negated when other determinants of growth are negatively affected by general equilibrium adjustments. The expenditure-growth relationship depends on the level of government spending, the tax structure, and the parameters of production technologies.

## DATA

In our analysis, we use two variables: *y* and *edu*. The variable *y* reflects the country's GDP *per capita*, expressed in constant 2005 local currency units (Macedonian denar, MKD). This variable was collected from the World Bank Database (World Bank 2013).

The second variable, *edu*, represents government expenditure on all levels of education. Although the functional classification of the government budget (COFOG classification) has the most exact information regarding the purpose of the government-allotted funds, the Republic of North Macedonia only reports statistics on functional classification back to 2010. As a result, we utilize statistics from the country's Ministry of Education and Science's expenditures in the central government budget as a proxy for education expenditure. With this in mind, the variable *edu* represents the public resources dedicated to education. This variable is also given in 2005 constant local currency units (Macedonian denar, MKD). The information is derived from the annual financial statements of the country's central government budget.

Both variables have an annual frequency and cover the period 1991-2020. We changed the variables into their natural logarithm form to reduce heteroscedasticity in the model. The computations were performed using the statistical program EViews 10.

## METHOD AND RESULTS

This research aims to assess the impact of public education expenditures on economic growth. We use the bounds test approach originally developed by Peseran et al. (2001). We assume *y* is the dependent variable, and *edu* is the independent variable. We estimated the following equation:

$$\ln Y_t = c + \alpha \ln Edu_t + \varepsilon_t \quad (1)$$

Before proceeding with the analysis, we conducted unit root tests to check the stationarity of the variables.

### Unit Root Test

In order to avoid spurious regression, the first step in our analysis was checking the stationarity of the time series. In the test equation, we used both the individual intercept and trend. We performed the ADF-Fischer and PP-Fischer Chi-square tests, assuming individual unit root processes as a null hypothesis. These two tests are considered the most appropriate unit root tests for unbalanced panel data (Baltagi 2005). The results from the unit root tests are reported in Table 1.

**Table 1: Unit Root Tests Results (Source: Author's calculations)**

Variables	ADF (SIC)		Philip - Perron test	
	Level	First Difference	Level	First Difference
<i>y</i>	-5.039***	Æ	-4.922***	Æ
<i>edu</i>	-1.776	-3.785**	-1.617	-3.638**

Note: \* represents 10% level of significance, \*\* represents 5% level of significance, \*\*\* represents 1% level of significance, respectively. Æ sign indicates that the variable is stationary at level.

The results from both of the stationarity tests suggest that the variable *y* is stationary at level (I(0) process), while the variable *edu* is stationary at the first difference (I(1) process). This

result requires a further test of the long-run relationship with the bound test (Iheanacho and Nwaogwugwu 2021).

### Co-integration Analysis

The stationarity test of the variables used in our paper suggests that the variable  $y$  is stationary at level, while  $edu$  is stationary at the first difference. In light of this, we ran an ARDL bound test to see if there is a long-run relationship between the dependent and independent variables.

We have estimated an ARDL (1,1) model with an unrestricted constant. A decision was made not to use a trend in the model because the trend was not statistically significant at a level of significance of 5%.

Then, we have run a co-integration test to examine the long-run equilibrium of the variables. The results from the bounds test are given in Table 2. The calculated F statistic in our model is 12.822. Its value is higher than the lower and the upper critical value, at a level of significance of 1%. Because the F-statistic value is greater than the critical value, we can conclude that there is a long-term relationship between the variables (Cho et al. 2015). Alternatively, or to put it differently, the bound test results suggest that there is a co-integration between the GDP *per capita* and the education expenditures.

**Table 2: Bounds Testing Results (Source: Author's calculations)**

			10%		5%		1%	
Model	K	F-stat	Lower Bound	Upper Bound	Lower Bound	Upper Bound	Lower Bound	Upper Bound
Model with Constant	1	12.822	4.04	4.78	4.94	5.73	6.84	7.84

We proceed with the estimation of long-run and short-run ARDL models because the results of the bounds test suggest that there is a proven long-run relationship between education expenditures and GDP *per capita*.

### Short Run Analysis

The coefficient estimates and their corresponding t-statistics and p-values for the ARDL (1,1) error correction model are reported in Table 3. The test result for the error correction term (ECT) is -0.005528. The ECT value is negative and higher than -1. Also, it is statistically significant at the 1% level of significance because its p-value is below 0.01. The speed of adjustment from short-run equilibrium to long-term equilibrium is -0.005528, or 0.00055% of the model distortion that occurred in the first year. Based on the ECT value, we may conclude that ARDL (1,1) is a valid model for explaining the country's short-term dynamics between GDP *per capita* and education expenditures.

**Table 3: Short-Term ARDL (1,1) Error Correction Model Estimates (Source: Author's calculations)**

Variables	Coefficients	t-statistics	Probability
constant	0.6631***	5.2702	0.0000
d(edu)	-0.0205*	-1.9851	0.0582
Ect(-1)	-0.0055***	-5.1642	0.0000

Note: \* represents 10% level of significance, \*\* represents 5% level of significance, \*\*\* represents 1% level of significance, respectively.

The  $d(edu)$  variable is significant at 10% level of significance. The coefficient estimate is negative, -0.0205, presupposing that all else held constant, 1% increase of public funds allocated towards education will decrease GDP *per capita* by -0.021 in the short run. This result is consistent with previous findings (Benos and Zotou 2014; Teixeira and Queiros 2016; Coman, Lupu, and Nuta 2022).

### Long Run Analysis

The bound test results indicated that the country's GDP *per capita* and education expenditures are in long-term equilibrium. The long-term model results are presented in Table 4.

**Table 4: Long-Term ARDL Model Estimates (Source: Author's calculations)**

Variables	Coefficients	t-statistics	Probability
Edu	-4.4351	-0.2168	0.8301

Note: \* represents 10% level of significance, \*\* represents 5% level of significance, \*\*\* represents 1% level of significance, respectively.

The coefficient estimate for education expenditures is also negative in the long term. In the long run, an increase of 1% in education expenditures will lead to a decrease in GDP *per capita* by -4.4351, on average, *ceteris paribus*. Previous studies reported a negative relationship between education expenditures and GDP (Keller 2006; Ifa and Guetat 2018).

### Stability Checks

The model developed in our research is robust. We performed numerous tests to assess the stability of the chosen model, including homoscedasticity tests (White's test and Breusch-Pagan-Godfrey tests), autocorrelation tests (Durbin Watson test), and serial correlation tests (Brouch Godfrey LM test). A Ramsey RESET test was also performed to see whether there is a functional form misspecification. Table 5 displays the results of the stability testing.



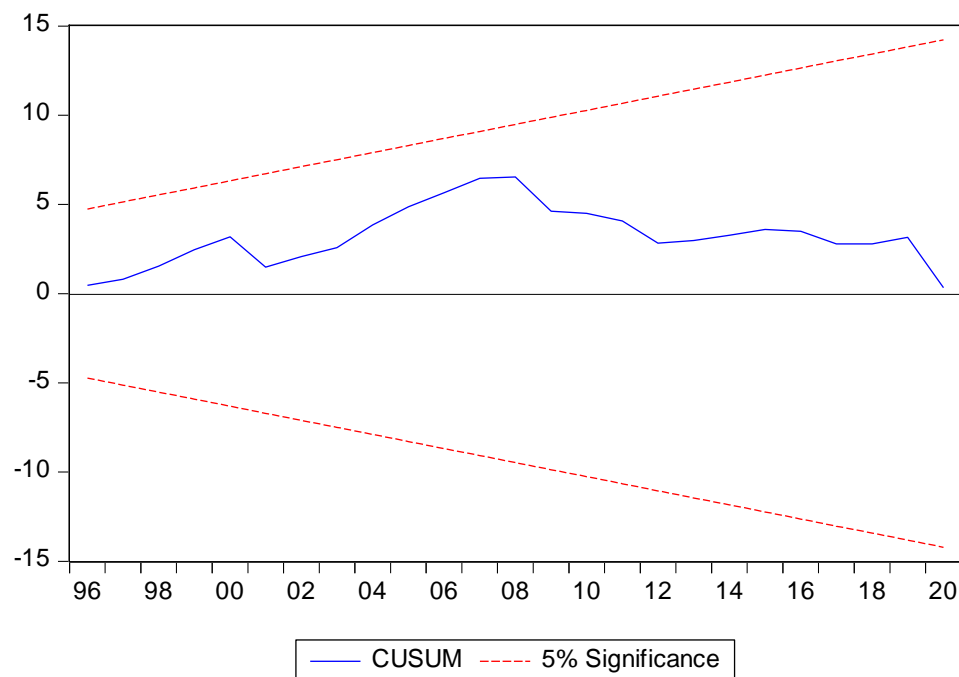
**Table 5: ARDL Diagnostic Tests (Source: Author's calculations)**

Test	Statistics	P-value	Decision
White's test	0.4696	0.8631	No heteroscedasticity
Breusch-Pagan-Godfrey	0.3888	0.7620	No heteroscedasticity
Breusch-Godfrey LM test	0.0738	0.9291	No serial correlation
Durbin Watson	1.6528	/	No autocorrelation
Ramsey RESET test	3.8143	0.0626	No functional form misspecification

Both tests for heteroscedasticity (White's test and Breusch - Pagan - Godfrey test) have p-values greater than 5%, indicating that we cannot reject the null hypothesis of homoscedasticity between the variables in the model. For identifying serial correlation, the Breuch - Godfrey LM test is used. The p-value of the F-statistic of the test is also greater than 0.05, indicating that no serial correlation exists in the model. The Durbin - Watson statistics value is 1.6528, which falls between 1.5 and 2. Based on this conclusion, we can conclude that the model has no autocorrelation.

In addition, we ran the Ramsey RESET test. This broad misspecification test is designed to discover omitted variables and incorrect functional forms. This test's computed F-statistic is 3.8143, with a corresponding p-value of 0.0626. We can conclude that we cannot reject the null hypothesis ( $H_0$ : No omitted variables) because the model is sufficiently stated at a level of significance of 5%.

In the end, we performed a CUSUM test for the stability of the model. The results are presented in Figure 1. We notice there is no deviation throughout the analyzed period.



**Figure 1: CUSUM Test**

## CONCLUSION AND POLICY IMPLICATIONS

Using an autoregressive lag distributed (ARDL) model, we calculated the influence of public education spending on economic growth in this study. The paper examines this relationship in the Republic of North Macedonia context from 1991 to 2020. We used data from the Ministry of Education and Science as a proxy for public education spending and a logarithmic transformation of real GDP *per capita* as a proxy for economic progress. First, we checked for variable stationarity, then we looked at the short-term link between public education spending and GDP *per capita*, and last, we looked at the long-term association. Stability tests confirmed that the results are robust.

We found a negative and statistically significant relationship between government expenditures on education and the economic growth of the Republic of North Macedonia. The negative association between these factors is statistically insignificant in the long run. These findings corroborate earlier country-specific research (Kouton 2018; Ifa and Guetat 2018; Coman, Lupu, and Nuta 2022).

We look at two plausible explanations for our findings. First, the country's public education expenditures are low in absolute and relative terms. As we noted at the outset of this paper, the county contributes just a small percentage of its central budget to education. Regarding government investment in education, the country trails behind the EU and OECD averages. These levels of government spending are sufficient to maintain the current educational infrastructure but insufficient to create and increase human capital. The second possible explanation for this result is the inefficient allocation of the public funds devoted to education.

From a public policy stance, we advocate for an increase in the government's education budget. In addition, we advocate for measures and initiatives that increase educational quality and accelerate human capital conversion. Priorities in this regard include optimizing the school and university network, modernizing school and university curricula, and increasing capital spending on educational infrastructure.

One potential weakness of our analysis is the proxy we utilize for government education spending. We used the Ministry of Education and Science's expenditures as a proxy for the country's public education spending. The study included the years 1991 through 2020. Another technique is the classification of government functions (COFOG) approach to differentiate education expenses. However, COFOG reporting in North Macedonia was started in 2010, making it methodologically difficult to determine the long-term relationship between education expenditures and economic growth. Furthermore, future research should consider the importance of other human capital components, such as population health, to the country's economic growth.

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# RETHINKING STRATEGIC AUTONOMY IN TIMES OF NEXT GENERATION EU: NEW DIGITAL AGENDA

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**Abstract:** *The digital transformation of the global economy and society has accelerated after the Covid-19 pandemic. The European Union (EU), compared to China and the United States, is losing its capacity for innovation and control over data and fundamental raw materials and could even lose ground in the regulatory power it has in the digital realm. This paper pays special attention to the situation and progress toward a new European policy to achieve digital strategic autonomy. It also briefly outlines the Recovery Plan for Europe as a possible incentive for its promotion. Both descriptive and analytical methods were employed to gather the data from secondary sources and provide reliable research results. The major findings of this article are that strategic autonomy is an imperative requirement for sustaining and encouraging European integration, forcing the EU to advance faster toward developing critical digital technologies. There is also an urgent need to secure critical parts of supply chains and data protection, intellectual property, and defense against disinformation. Finally, the European Union must improve its resilience to face new crises and lead the digitalization of its economy.*

**Keywords:** *European Digital Autonomy; R&D; Strategic Pillars; Digitalization; Missions; Next Generation EU*

## INTRODUCTION

Strategic autonomy is not defined in any official document of the European Union. Nevertheless, it is reflected, above all, in its Global Strategy for Foreign and Security Policy (EUGS) and in multiple statements of the European leaders. Therefore, it is a relatively new issue that refers to industrial strategy. In this way, it has to make it possible to manage risks relating to supply chains, strategic investments, the strength of the internal market, or the control of future technologies too (Molina and Benedicto 2021).

Additionally, the European Commission (EC) recognized digital policy as one of the key political priorities of its 2019-2024 mandate, pledging for Europe to have technological sovereignty in critical areas. In other words, the ability to make "autonomous technological decisions" and the ambition to shape rules and standards at the international level (Moghior 2022). The EC welcomes the idea of strategic autonomy referring to the ten key areas of action in which the European Union can seize opportunities "for its global leadership and open strategic autonomy" (European Commission 2021b), together with highlighting the green and digital conversion and speaking of "strengthening resilience and open strategic autonomy in critical sectors for the double transition through, for example, the work of the EU Observatory of Critical Technologies, or the common agricultural policy to ensure food security" (European Commission 2022).

If we apply strategic autonomy to digitalization in Europe, its industrial dimension must cover economic, technological, and military needs. The operational aspect refers to the resilience of critical infrastructures and information and communication technology (ICT) systems against cyberattacks. Weaknesses in these two dimensions can disturb the political autonomy of the Member States (MS), that is, the ability to make decisions freely and independently. Due to risks such as electoral interference, espionage, or dependence on imports of raw materials, components, and equipment expose the European Union, its MS, and companies to supply chain disruptions, coercion, or sabotage by foreign forces. That fragility can also erode the EU's ability to shape international rules, norms, and standards that reflect its interests and values.

As a consequence, the buildout of basic and emerging digital technologies such as 5G, Artificial Intelligence (AI), high-performance computing, advanced robotics, or virtual reality, which will have an increasing impact on all sectors of the economy, the labor market and society as a whole, becomes a key aspect for the future of the European Union.

Considering the mentioned issues, the main objective of this research was to study the situation and progress toward European digital strategic autonomy. Furthermore, its development allowed it to meet its secondary goals. On the one hand, underline the status of the European investment in research and development (R&D) and the strategic pillars that the EU must face to achieve such autonomy. Also, emphasize the necessity for Europe to accelerate its digitalization and the mission model created by the European Commission. The research also briefly outlines the Next Generation EU (NGEU) as a possible incentive for promoting European digital autonomy.

Finally, the carried-out study has been based on the deductive research model (Woiceshyn and Daellenbach 2018). Descriptive and analytical methods were used, collecting the data from secondary sources and providing reliable conclusions for the research.

## INVESTMENT IN R&D AND THE STRATEGIC PILLARS

Analyzing the economic data, we see that the investment in R&D at the global level has increased for the eleventh consecutive year (Joint Research Centre 2021). According to the R&D indicators of 2020, the 2,500 companies, which are examined worldwide, invested 908,900 million euros, 6% more than in 2019. Likewise, enterprises in China showed double-digit R&D growth (18.1%), and the United States (US) grew at 9.1%, while those in the European Union decreased R&D by 2.2%, compared to the 5.6% increase in 2019. Regarding the participation of the EU companies in global R&D, this decreased to 20.3% (in 2019, it was 20.9%) (Joint Research Centre 2021), while the US companies did so to 37.8%. However, Chinese companies raised their share, reaching 15.5% (from 13.2% in 2019).

Accordingly, Europe should be faster in developing, adopting, and diffusing critical digital technologies (such as Artificial Intelligence, quantum computers, or 5G), which will play an increasingly central role in economic and military developments. Member States must jointly invest in the leading emerging technologies to compete on equal terms with China and the United States (European Commission 2019). EU digital autonomy is necessary for strategic economic autonomy and to achieve strategic sovereignty (Shapiro 2020). Without a strong



industrial base built on technology, it will be difficult for Europe to shape global affairs in economic and defense terms.

R&D and its proximity to digital technology are also reflected in patent analysis (World Intellectual Property Organization 2021). In the European Union, patent applications fell by 0.6% (from 181,479 patents in 2019 to 180,346 in 2020), unlike in China, where the increase between 2019 and 2020 was 6.4% to reach one and a half million. Almost twice as many patent applications as the second most active country, the United States, with 597,172.

Globally, patent offices located in Asia received nearly two-thirds (66.6%) of all applications filed worldwide in 2020. A considerable increase was driven mainly by long-term growth in China. Meanwhile, the offices located in North America recorded 19.3% of the global total of applications, in the time those in Europe more than a tenth (10.9%).

Focusing on the technological field, we can differentiate three pillars of particular importance that the European Union must urgently address. The first is R&D in Artificial Intelligence and 5G. A field in which Europe has lagged behind its two main competitors, China and the United States. The second is the need to secure critical parts of supply chains. We mean raw materials and rare earth elements. Finally, creating a digital future to protect European citizens from disinformation and attacks by foreign agents and to achieve sustainable economic growth thanks to advances in the field.

## **Artificial Intelligence and 5G**

Artificial Intelligence is a combination of technologies that brings together data, algorithms, and computing power. Its rapid progress makes it a powerful tool economically, politically, and militarily (Mialhe 2018). It is also at the heart of the national security strategies of the Member countries, as well as rooted in the dynamics of global geopolitics. Although European funding for research in Artificial Intelligence has increased in recent years, this investment is lower than that in the United States or China (European Commission 2020a). However, according to the European Data Strategy, the EU can combine its technological and industrial potential with a high-quality digital infrastructure and a regulatory framework to become a world leader in innovation in the data economy and its applications. To do this, it needs to increase its investment levels significantly. Developed with Member States, the Coordinated AI Plan is a good starting point for closer cooperation on Artificial Intelligence in Europe and for creating a symbiosis that optimizes investment in the relevant value chain.

The 5G supply chain comprises a large number of actors from different countries, with various ethical and qualitative standards of cybersecurity and data protection. Only two companies from the European Union (Ericsson and Nokia, which cannot compete on price with China's Huawei) are among the top 10 economic organizations with the most 5G patents. It accounts for just 1/7 of all 5G patents worldwide, as well as is failing to reach a consensus on "whether [mobile operators] should give in to United States demands to exclude leading equipment supplier Huawei and other Chinese suppliers" (Mukherjee and Binnie 2020). The pandemic has also slowed down the auctioning of the 5G spectrum, while the EU still cannot guarantee a fully European value chain. In short, "unless Europe moves quickly, it risks losing

growth and weakening industrial competitiveness in manufacturing and logistics that could cost billions of euros in new wealth” (Mukherjee and Binnie 2020).

In fact, in March 2019, the 27 Member States, concerned about the security of 5G networks, adopted a Regulation on network cybersecurity. Each member then completed a national risk assessment of their 5G network infrastructures and transmitted the results to the European Commission and the European Union Cybersecurity Agency (ENISA), publishing a report on the main threats and interveners, the most sensitive assets and the main vulnerabilities affecting the Union's 5G networks.

Beyond any doubt, ensuring the cybersecurity of 5G is certainly a way to strengthen technological autonomy. Given the importance of infrastructure for future technologies, its deployment must be carried out quickly and safely in all Member States. The resilience of 5G will have repercussions on digital communications, critical sectors such as energy, transport, banking and health, and industrial control systems.

We cannot forget that Europe is slowly developing, adopting, and diffusing disruptive innovations. Its shortcomings in some value chains and critical digital technologies could cause further delays in applying technologies such as Artificial Intelligence or 5G, which will play an increasingly central role in economic and military developments (European Commission 2019). Member States must pool resources and complement each other in the key value chains. Joint and ambitious investments in these emerging technologies (Artificial Intelligence, quantum, next-generation microchips, or 6G) are needed to compete with China and the United States.

### **Securing Critical Parts of Supply Chains**

The strength of Europe's industrial and technological base banks largely on having reliable access to raw materials, which are vital to the economy and present a high supply risk. The EU heavily depends on international markets in this area, with very limited domestic production. Aware of that exposure, the European Commission has regularly reviewed and updated a list of critical commodities since 2011. The supply of many of them presents a high degree of concentration. Based on their economic importance and supply risk, Europe has examined 83 materials considered critical, assessing that there are 12 fundamental raw materials for the digital economy within its agenda (European Commission 2020b). However, the EU depends not only on foreign raw materials but also on foreign components and technology. This factor increases as it lags in the production of digital technologies. Strategic sectors for the EU's economy include renewables, photovoltaics, wind generators, robotics, construction, automotive, electric mobility, batteries, traction motors, fuel cells, defense and space, drones, and 3D printing. The European Union also does not have the capacity for extraction, processing, recycling, refining, and separation (e.g., lithium or rare earth elements).

This reflects a lack of resilience and a high dependence on supply from other regions of the world. In other words, gaps that affect all industrial ecosystems require adequate inventories to avoid unexpected disruptions to manufacturing processes, alternative supply sources, closer partnerships with key players in the field of raw materials, and attracting investment for strategic developments (European Commission 2020b).

Access to resources is a matter of strategic security for Europe's ambition, while the Covid-19 pandemic, together with the ongoing war in Ukraine, has revealed how quickly global supply chains can be altered. The EU must act to improve its resilience to face possible future crises and lead the green and digital transformation. The new industrial strategy for Europe proposes strengthening the strategic autonomy for the EU's resilience as mentioned raw materials, lacking diversifying external supply and increasing domestic supply in strategic areas, reducing over-dependence on imports, improving resource efficiency and circularity, including sustainably designing products.

### **Data Protection, Intellectual Property, and Defense against Disinformation**

The European Commission launched the digital goals for 2030 to achieve “a successful digital transformation for Europeans by 2030” (European Commission 2021a). Concerning data protection, the EU has deployed its regulatory power “forcing companies around the world to comply with European privacy practices” through the General Data Protection Regulation (GDPR), the Digital Services Act, and the Digital Markets Act, seeking to “create a safer digital space in which the fundamental rights of all users of digital services are protected” and to “establish a level playing field to encourage innovation (...) and competitiveness, both in the European single market and globally” (Shapiro 2020). Therefore, the European data strategy intends to create a single market guaranteeing Europe's global competitiveness and data sovereignty.

Regarding the defense of intellectual property, in 2020, the Commission adopted an Action Plan on Intellectual property “aimed at helping companies, especially SMEs, to make the most of their inventions and creations and ensure that they can benefit our economy and society” (European Commission 2020d). Its main objective is to shield European companies from foreign interference and acquisitions, especially Chinese ones, “since they benefit from huge state subsidies, (...) the theft of intellectual property, forced transfers of technology and huge amounts earmarked for state-backed research and development” (Oertel 2020) and “enable Europe's digital competitors to access both European technology and digital infrastructure” (Ortega Klein 2020).

Lastly, the EU also approved a Cybersecurity Strategy to strengthen European resilience against cyber threats and to help ensure that all citizens and businesses can benefit from reliable digital services and tools. In addition, the European Commission has proposed cyber resilience of critical entities and networks in the 27 Member States in a coordinated manner to minimize exposure to high-risk providers and avoid dependence on them. Pending and essential steps that will allow the EU to foster its leadership in the field of international cyberspace standards and enhance its cooperation with partners around the world in order to promote a global, open, stable, and secure cyberspace, based on the rule of law, human rights, fundamental freedoms, and democratic values.

## THE STIMULUS FOR DIGITIZATION AND THE MISSIONS MODEL

After analyzing the three pillars that the European Union urgently needs to address in the technological field, from the perspective of strategic autonomy and digitalization progress, it is to be observed that the exposed technological deficits will not only generate economic disadvantages but will also have wider implications on the EU's ability to protect its interests. The Covid-19 pandemic and the ensuing economic crisis have accelerated the development and adoption of digital services at an unprecedented rate. At a time when the need for digital transformation is greater than ever, the policies and interventions that drive it can also be an engine for recovery, growth, and increased global competitiveness.

These technologies require substantial research and innovation investments to be adopted and generate economic or social benefits. Economies of scale are an inherent feature of digital technologies as they crave large amounts of data, users, or connected nodes, which makes any market fragmentation a barrier to the implementation of technologies such as high-performance (or quantum) computing, advanced AI applications or globally competitive cloud services (European Commission 2020c). As previously underlined, Europe's global position in digital innovation is not one of leadership, as China and the United States have an advantage in digital adoption and investment. The Asian giant accumulates almost half of the global venture capital investment in Artificial Intelligence start-ups, ahead of the United States, and both actors are expected to increase public and private spending on digital technologies significantly and AI in the short term, far beyond Europe (Pitchbook Database 2019).

That is why the EU needs to encourage digitalization. The move can come from the Multiannual Financial Framework (MFF) and the Recovery Plan for Europe. These resources could generate a great impact if research and innovation have a clear objective and can mobilize different sectors of society around that purpose. That is how the missions operate, a concept developed by Professor Mariana Mazzucato that aims to promote the model of the Apollo space mission to the Moon as the way forward to develop innovations and spread them in the economy, what she calls a "mission-oriented" approach. For Mazzucato (2019), "a bold approach, a redesign of tools such as tenders", is necessary. Both governments and companies share risks and benefits, with the public sector responsible for fixing and creating markets.

The EU missions aim for innovation and should include citizens in solving major societal challenges and creating a general public expectation about research and innovation. Likewise, we must consider the capacities of the public sector and the instruments necessary to promote a dynamic innovation ecosystem that includes changes and willingness to experiment on the part of officials and help governments work outside their comfort zone. Also, the missions need financing, and for this, the public, private, and third-sector entities must be mobilized, increasing the levels of investment in R&D (Mazzucato 2019). In any case, it should be stressed that the mission-oriented innovation policy is already reflected in the work of the European Commission, in particular on social challenges: "missions that will help direct research and innovation towards solutions to the biggest problems of our time, from the need to fight climate change to the need to build resilient health systems" (Kattel et al. 2018), being a model to follow for other sectors.

## THE DIGITIZATION OF THE EUROPEAN ECONOMY AND THE NEXT GENERATION EU

Digitalization, its development, and implementation can modify and influence the productive specialization of States and their economies, particularly within the service sector and its configuration (European Parliament 2022). The continuity of this phenomenon seems to be assured, thanks to the growing global connectivity. Moreover, using data and its treatment as a product and service opens many possibilities for improving the competitiveness of business entities and sectors (Van Dijck 2014). Nevertheless, digital transformation has become a challenge for the European Union. The deep recession resulting from the Covid-19 pandemic and the ongoing conflict in Ukraine has accelerated certain technological trends and exposed the weaknesses of the EU and its countries.

In this way, the Multiannual Financial Framework for the 2021-2027 period takes European digital sovereignty as one of its priorities by counting with the Digital Europe Programme “focused on building the EU's strategic digital capabilities and facilitating the wide deployment of digital technologies” (Gutiérrez 2020). Endowed with 8,200 million euros, it aims to bridge the gap between research and the deployment of digital technologies, mainly in supercomputing, AI, and cybersecurity.

Also, the launch of Next Generation EU opens a long process of structural reforms and transformation, increasing the degree of fiscal responsibility and commitment to macroeconomic stability, seeking to improve the efficiency, equity, and sustainability of the European economies (Bańkowski et al. 2021). This federalizing and first-rate element, linked to the increase in the EU's resources ceiling and the issuance of the common European debt, aims to distribute its funds among the States according to the degree of need. It is also complemented by national reforms, designed in consonance with each country's economic, political, and social conditions and the agreed recovery and resilience plans. Through its development, the European Commission also stipulated the different areas considered crucial to promote the degree of digitalization of the Member States. Among them, the quality of digital structures, promoting the training of the workforce in the digital context, the development and implementation of new technologies by SMEs, the greater distribution of business size, and the impetus for the degree of digitalization of public administrations of the EU countries (Czubala Ostapiuk and Benedicto 2021).

Nonetheless, there are also countless uncertainties about the potential impact of the Next Generation EU on the European Union. Likewise, the few bibliographic sources offer different attempts at analyzing and referencing this phenomenon (presenting more or less conservative scenarios). In general terms, given that the knowledge about the impact of digitalization on the economy is limited, the European Commission's estimates have been used to try to assess the importance of NGEU funds in the context of the European Union (Janos Varga et al. 2021). Thus, first of all, it is essential to point out a series of simplifying assumptions used by the EC: the total simulated allocation amounts to around 4% of Community Gross National Income (GDP) (with 396 billion euros in grant instruments, following the allocation by country within the Recovery and Resilience Mechanism (MRR); the 166 billion euros are in the form of loans from MRR, following requests from seven Member States (as of July 2021); two temporary scenarios, four years (2021-2024) and six years (2021-2026), are established for all

member countries; the use of all the subsidies of the Recovery Plan for Europe and half of the loans (additional 50%) for productive public investment are perceived, with productivity assumptions according to the literature; all the countries repay the Community debt based on the current quotas of the GDP; the impact of the reforms is not quantified.

Next, considering the above assumptions, a substantial effect of Next Generation EU investments on the growth of the European Union is reflected. For the first scenario, for 2021-2024, we observe an increase in GDP in the EU of 1.5% (in 2024). Meanwhile, in the second scenario (2021-2026), although the growth rate is somewhat lower (1.2% in 2026), it is still important. Moreover, the productivity of public capital causes additional investment to boost demand and increase potential growth, so the European Commission predicts that the supply-side effects will last beyond the implementation of the Next Generation EU (increasing the gross domestic product of the European Union, approximately, by 0.5% even within 20 years). Also, it calculates that NGEU's impact on employment will be 1%, improving labor market conditions and promoting productivity.

After all, despite the discretion about its effects, the information found in the economic literature indicates that this is a very positive scenario, compared to the most conservative estimates, even during the recession (Auerbach and Gorodnichenko 2013). The result is scattered, mainly due to the premature nature of these exercises and the exceptional economic situation. Therefore, the uncertainty regarding its impact is still high and requires future research to complete the exposed vision (Zsolt 2021). What does seem to be clear is that the multipliers of the action undertaken under the Recovery Plan for Europe will be important. Finally, it is worth noting that NGEU forms a coordinated Community response without forgetting the positive indirect effects between the Member States. Therefore, we are talking about a historic stimulus in the context of the European Union, but it is still pending further in-depth studies on its impact.

## CONCLUSION

Strategic autonomy is a critical requirement for sustaining and encouraging European integration. Its promotion implies protection and knowing how to project a positive agenda on the world stage, covering the whole of the European Union's action. Further, for autonomy to be viable, the combination of the possession of sufficient minimum resources and the existence of the committed elites is necessary (Puig 1980).

The main objective of this article was to study the situation and progress toward European digital strategic autonomy. The EU must avoid falling behind digitalization as the economic, social, and geopolitical costs can be enormous. Weak technology, critical infrastructure, and over-reliance on imports of key raw materials can affect Europe's political autonomy and global regulatory power. Likewise, Europe has to advance faster towards developing critical digital technologies such as Artificial Intelligence or 5G to compete with two great powers, China and the United States. There is also an urgent need to secure critical parts of supply chains, protect data and intellectual property, and act against disinformation. In addition, for the various European regions to be favored and to achieve cohesion, public



intervention will be necessary because some of the investments, needing markets and economies of scale, will only be effective at the European level.

The research also briefly outlines the Recovery Plan for Europe as a possible incentive for promoting European digital autonomy. In order to protect its strategic interests, the EU must improve its resilience to face new crises and lead the digitalization of its economy. The impetus can come from a public instrument at the European level. This will require aligning European economies with the objective of digitalization by coordinating financial policy, industrial strategy, innovation policy, and fiscal stimulus. Despite the many unknowns regarding the details of the financing programs or the potential scope of the NGEU implemented measures, among others, it can be said that the magnitude of its actions will be the impact of public investment projects on the general productive capacity of the economy.

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# WHAT DOES “BIG DATA” TELL? A NETWORK ANALYSIS APPROACH TO THE JUSTICE AND DEVELOPMENT PARTY’S ROLE PERFORMANCE IN THE MIDDLE EAST BETWEEN 2015 AND 2020

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**Abstract:** *In this paper, we exploited big data (The Global Database Events, Language and Tone - GDELT) by utilizing network analysis to elaborate on the Justice and Development Party's (JDP) Middle East (ME) policy for 2015 and 2020 - our conceptual framework built on the role theory. We identified two dynamics - the positioning of the “Transatlantic” link in Turkish Foreign Policy's (TFP) orientation and the shape and politics of the JDP elites' conception of activism - based on which we developed two hypotheses to conceptualize the JDP's role performance for the period: 1) There was a mismatch between national role conceptions and systemic role prescriptions for Turkey in the period of analysis; 2) This mismatch led the appeal of partnership with non-Western actors to rise. We utilized network analysis by exploiting the GDELT big dataset to test our hypotheses empirically. The empirical findings proved the validity of our conceptual arguments.*

**Keywords:** *Turkish Foreign Policy; Justice and Development Party; Network Science; Role Conflict; Big Data; Middle East*

## INTRODUCTION

In this paper, we exploit big data (The Global Database Events, Language and Tone - GDELT) utilizing network analysis to elaborate on the Justice and Development Party's (JDP) Middle East (ME) policy for 2015-2020. Our analysis builds on the conceptual framework of role theory. We choose JDP's ME policy as a case in our study because we believe Turkey's role performance in the ME in this period presents a remarkable case to observe the interaction of the agential and systemic dynamics of the foreign policy process. Since 2002, when the JDP government came to power, the framework of Turkish Foreign Policy (TFP) in the ME differs sharply from the Turkish official state mentality, which consists of Westernization, Laicism, reformism, and *status quo*-ism/non-involvement in regional issues as the central tenets of foreign policy-making (Mengüaslan 2016). The JDP's ME policy, based on a conservative democrat identity that includes multilateralism, multi-dimensionalism, reformism, and activism as the main features, reflects the JDP elites' multi-dimensional and assertive views on Turkey, as well as envisaging assertive foreign policy national role conceptions, putting at the center the activism (Başer 2015, 292-294). Assuming a multi-dimensional foreign policy framework envisions an assertive and active Turkey, the JDP elites adopted pro-active national role

conceptions for Turkey, especially in the ME. In this context, the Transatlantic role prescriptions for the JDP's pro-active ME policy have been supportive until the "Arab Revolts". However, the shifts led by the post-Arab Revolts developments have created a different strategic context in which an assertive TFP that diverges from the Transatlantic prescriptions seems to be unwelcomed.

Consequently, the JDP elites' divergent role conceptions drifted apart from multi-dimensionality, precluding the transformation of multi-dimensional activism into assertive unilateralism (Kutlu et al. 2021). Turkey's political appeal also diminished in the ME, and the relations soured with neighbors. The JDP elites euphemistically defined this delicate and competitive political context as precious loneliness (Gardner 2015).

We analyze 2015-2020 because, in this period, the systemic role prescriptions and the JDP's role conceptions demonstrated further divergence. The JDP elites have found themselves in a concretized context of precious loneliness, which set the stage for further divergence between the JDP elites' national role conceptions and the role prescriptions of the Transatlantic community. The more the Transatlantic community's role prescriptions did not satisfy Turkey's security and political concerns, the more the degree of activism shifted towards unilateralism, further diminishing the appeal of the Transatlantic support to TFP and increasing the desirability of strategic partnerships with non-Western powers.

Accordingly, we present two main arguments. First, the current approaches to the JDP's ME policy lack a holistic framework bringing together the systemic and agential dynamics of the foreign policy process (Görener and Ucal 2011; Kesgin 2020; Çuhadar et al. 2021; Kirişçi 2009; Murinson 2006). To this gap, we argue that role theory presents a holistic framework by combining systemic and agential dynamics of the foreign policy process to analyze the JDP's ME policy. The concept of role conflict enables us to conceptualize the implications of the mismatch between the JDP elites' national role conceptions and systemic role prescriptions for Turkey as a source of the JDP's role performance in the ME. However, the existing analyses utilizing role theory to study the JDP's ME policy emphasized the agential dynamics of role performance (Özdamar, Halistoprak, and Sula 2014; Akbaba and Özdamar 2019; Başer 2015; Ovalı 2013), which has left the interaction between agential and systemic dynamics of the foreign policy process as a source of conflictual role performance understudied. Our analysis differentiates from this line of analysis by exploring the mismatch between the national role conceptions and the systemic role prescriptions for Turkey as a source of the JDP's conflictual role performance in the ME for 2015-2020. Thus, our second argument is that by utilizing a statistical/computational network analysis approach to empirically test our conceptual arguments building on a holistic conceptualization of role conflict, we can provide a more robust and empirical analysis of the JDP's ME policy. Thus, as a contribution to the second gap, we utilize big data to test conceptual arguments through network analysis empirically. Network analysis can "offer a bridge to connect levels of analysis, and combine relations, attributes and structures" (Maoz 2012, 252), and more than "serving solely as a tool for examining a particular form of organization, it permits fine-grained conceptualization and measurement of structures" (Hafner-Burton, Kahler, and Montgomery 2009, 561). We argue that an empirical analysis of big data based on network analysis tests and complements the validity of theoretical arguments of the role theory approach.

## **"ROLE CONFLICT" AS A CONCEPTUAL FRAMEWORK FOR ANALYZING THE JDP'S ME POLICY**

Role theory argues that states, as agents in the international system, assume foreign policy roles that inform the performance of foreign policy actions (Holsti 1970, 241). Role theory provides a methodological advantage in foreign policy studies by its holistic framework that brings together the systemic (role prescriptions) and agential (national role conceptions) dynamics of the foreign policy process (Chafetz, Abramson, and Grillot 1996; Aggestam 2018; Thies 2013). The concept of role conflict/contestation is introduced by role theory to conceptualize the interaction between systemic and agential dynamics (Cronin 2001; Cantir and Kaarbo 2012; Özdamar 2016). Role conflict is "between non-compatible, competing, or clashing role expectations about self and others between states and non-state actors" (Harnisch, Frank, and Maull 2011, 256). It occurs when 1) the capabilities of an agent do not match the requirements of the role; 2) there is an incompatibility between the national role conceptions and systemic role prescriptions.

Researchers who deploy the role theory approach to analyze the JDP's ME policy have contributed majorly to studying national role conceptions (Özdamar 2016; Özdamar, Haliştoprak, and Sula 2014; Sözen 2016). We argue that this line of analysis emphasizes the agential dynamics of role performance (Özdamar, Haliştoprak, and Sula 2014; Akbaba and Özdamar 2019; Ovalı 2013; Başıer 2015), which has left the interaction between agential and systemic dynamics of the foreign policy process as a source of conflictual role performance understudied. Thus, building on the concept of role conflict/contestation, our analysis differentiates from this line of analysis by exploring the mismatch between the national role conceptions and the systemic role prescriptions for Turkey as a source of the JDP's conflictual role performance in the ME for the period of 2015-2020.

To analyze the JDP's role performance in the ME between 2015 and 2020, we elaborate on two dynamics that reflect the interaction between systemic and agential elements of the foreign policy process. The first dynamic is the JDP elites' conception of activism (Kuşku-Sönmez 2019; Aydın Çakır and Arıkan Akdağ 2017; Kaliber and Kaliber 2019) in the ME. We define the concept of activism as proactively pursuing ambitious foreign policy goals, being assertive and multi-dimensional. Since 2002, when the JDP government came to power, the framework of TFP in the ME differs sharply from the Turkish official state mentality, consisting of Westernization, Laicism, reformism, and *status quoism*/non-involvement in regional issues as the central tenets of foreign policy-making (Menguaslan 2016). The JDP's ME policy, based on a conservative democrat identity that includes multilateralism, multi-dimensionalism, reformism, and activism as the main features, reflects the JDP elites' multi-dimensional and assertive views on Turkey, as well as envisaging assertive foreign policy national role conceptions, putting at the center the activism (Başıer 2015, 292-294). Assuming a multi-dimensional foreign policy framework envisions an assertive and active Turkey, the JDP elites adopted pro-active national role conceptions for Turkey, especially in the ME.

The second dynamic is the positioning of the Transatlantic link in TFP's orientation (Oğuzlu 2016, 2018; Haugom 2019; Keyman and Gisclon 2017). What we mean by this dynamic is the collaboration/competition with the Transatlantic partners and contributing to the liberal



international order championed by the US and European countries. We think that the shifts in the positioning of the Transatlantic link, especially after the Arab Revolts, have been a major determinant in Turkey's conflictual role performance. Because although the systemic role prescriptions for the JDP's proactive ME policy were supported, at least until the Arab Revolts, the developments following the Arab Revolts have changed the strategic context, making an assertive TFP that departs from the Transatlantic prescriptions seem unwelcome. A remarkable instance of this mismatch can be seen in the divergent views on confronting the expansion of ISIS and controlling the implications of the Syrian crisis (Kara and Sözen 2016, 61-62). The Transatlantic community expected Turkey to act as a buffer in confrontation with the ISIS threat and contain the Syrian refugees (Keyman 2016, 2283-2284) while emphasizing Turkey's role as a NATO ally.

On the other hand, the JDP elites were interested in strengthening Turkey's political, economic, and ideological influence by supporting the Muslim Brotherhood in the post-Arab Revolts context (Akbaba and Özdamar 2019, 99). For instance, the JDP elites' conception of "Muslim identity", previously endorsed by the Transatlantic community as an important feature of "the role model" in promoting democratization and economic reforms, was re-defined and turned into one that is informed by Sunni orientations to consolidate Turkey's power capabilities. Due to divergent views on Turkey's role in these burning issues, the JDP elites' activist role conceptions produced competitive role performances (Ayata 2015, 110). Kaliber and Kaliber argue that in the first decade of the JDP governments (2002-2012), the foreign policy discourse gradually shifted from de-Europeanization to anti-Westernism, resulting in situating the West as the other in Turkey's identity (Kaliber and Kaliber 2019, 8-10) and decentering of Turkey's Western orientation. Moreover, The JDP elites' conception of activism, lacking Transatlantic support, made ME policy more issue-centric and competitive. With an empirical study of international agreements in which Turkey took part during the JDP governments, Çakır and Akdağ demonstrate that while Turkey was actively involved in issues relating to sub-Saharan Africa and Latin America from 2007 to 2011, the pro-active and multi-dimensional policies dramatically decreased between 2011 and 2015 and, Turkey's involvement in the international organizations gradually decreased under JDP governments (Aydın Çakır and Arıkan Akdağ 2017, 350-351).

Consequently, the JDP elites' divergent role conceptions drifted apart from multi-dimensionalism, precluding the transformation of multi-dimensional activism into assertive unilateralism. Turkey's political appeal also diminished in the ME, and the relations soured with neighbors. The JDP elites euphemistically defined this delicate and competitive political context as precious loneliness (Gardner 2015).

From 2015 to 2020, we saw further growth of multipolarity in the regional system of the ME as the burning issue of the Syrian crisis, along with the containment of ISIS, directly involved the US and the non-Western actors in the ME geopolitics. On the one hand, Russia and Iran financially and militarily supported the al-Assad regime against regime opponents. On the other, the Trump administration in the US signaled more active policy in the ME by criticizing the previous Obama administration's retrenchment policy as deconstructing the region's US leadership.

In such a complicated context, when the JDP elites could not guarantee what they expected from the Transatlantic community relating to the 2016 coup attempt in Turkey, they started further questioning the sincerity of their strategic partners. They accelerated their search for autonomy, particularly in strategic issues. As a result, national role conceptions of activity grew more unilateral (Aras 2017, 7-9), according to President Erdogan's speech at the Justice Forum on 10 January 2018: "Our motto 'the world is bigger than 5' is the biggest-ever rise against global injustice" (Erdogan 2018).

The re-defined conception of activism was to produce two key results: three military operations into northeastern Syria (Euphrates Shield, Olive Branch, and Peace Spring) and procurement of military missile systems of S-400 from Russia (Oğuzlu 2016, 137), which together brought neither rapprochement between Turkey and the US nor the solution for Turkey's security and political concerns but turning TFP's activism into a more interventionist and unilateral one (Dalacoura 2017, 3-4). Firstly, the role prescriptions for Turkey demonstrated that autonomous actions would not be supported, especially by the US. President Trump urged Turkey not to launch a military offensive against the Kurdish-led forces in northern Syria (BBC News 2019). Although President Erdogan stated that "Turkey is not in Syria for oil or land, but to secure its borders" (Sevinc and Ozkan 2020). Turkey's military operations attracted direct opposition from the US. The US was not only declining the interventionist policies of Turkey but also reluctant to support the Syrian opposition (Altunışık 2016; Ahmad 2015, 17) due to deep concerns about the expansion of the ISIS threat and suspicions about the usefulness of the fragmented opposition groups in Syria (Orhan, Duman, and Pirinççi 2014). This led to conflicting alliances such that the US preferred to ally with the Syrian Democratic forces-PYD in the Syrian crisis and fight against ISIS while preventing Russia and Iran from penetrating Syria.

Secondly, as mentioned above, the JDP elites' feeling of exclusion from the Transatlantic community was to produce another concrete issue of divergence between the partners - Turkey's purchase of the S-400 missile system from Russia in 2019. The US unsurprisingly reacted very harshly, as US Vice President Pence stated: "Turkey must choose: Does it want to remain a critical partner in the most successful military alliance in the history of the world? Or does it want to risk the security of that partnership by making reckless decisions that undermine our alliance?" (Pence 2019).

Due to divergent views on Turkey's role in the ME, Turkey was suspended from the F-35 fighter jet program and imposed with the CAATSA sanctions by the US. However, rather than preventing Turkey from following a unilateral and interventionist policy, these actions further drifted Turkey apart from the strategic partnership with the Transatlantic community. Turkey continued to involve in close cooperation with Iran and Russia in the Syrian crisis (the Astana and Sochi processes) while being interested in Chinese economic initiatives (One Belt One Road Initiative) (Yang 2020).

From 2015 to 2020, the JDP elites found themselves in a concretized context of precious loneliness, which set the stage for further divergence between the JDP elites' national role conceptions and the role prescriptions of the Transatlantic community. The more the Transatlantic community's role prescriptions did not satisfy Turkey's security and political concerns, the more the degree of activism shifted towards unilateralism, further diminishing the



appeal of the Transatlantic support to TFP and increasing the desirability of strategic partnerships with non-Western powers.

Thus, we argue that the conception of activism and the former dynamic proves to be a meaningful litmus test to make sense of the changes in JDP's ME policy. Based on the two dynamics we identify, we develop two hypotheses regarding the JDP's role performance in the ME between 2015 and 2020:

1. There is a mismatch between national role conceptions and systemic role prescriptions for Turkey in the analysis period.
2. This mismatch led the appeal of partnership with non-Western actors to rise.

We empirically test these hypotheses by network analysis approach exploiting the GDELT dataset's big data.

### THE GDELT: BIG DATA SOURCE

The GDELT database provides the big data source in our analysis. The GDELT dataset is a valuable resource for scholars of international relations as it contains a wealth of information on global events. The dataset is updated daily and includes information on news outlets from around the world, making it a valuable resource for researchers interested in understanding global news dynamics. Additionally, the GDELT dataset can track events over time, allowing researchers to identify patterns and trends in global news. Starting in 2015, GDELT has a mesh drawing function that allows it to visualize and analyze its Global Knowledge Graph Network using the open-source Gephi network package. Powered by Google Ideas, the GDELT database is reliable because it constantly updates the latest news worldwide.

### NETWORK ANALYSIS

Networks are defined as interconnections between nodes (Figure 1) representing each network's units (Hafner-Burton, Kahler, and Montgomery 2009). Network analysis is a technique used to represent and analyze social relationships mathematically by applying link-node structure. It visualizes network relationships through mathematical techniques based on graph theory. Any ties between the nodes can be examined via network analysis which allows exploring and measuring the patterns of enduring relationships between nodes and structures in networks.

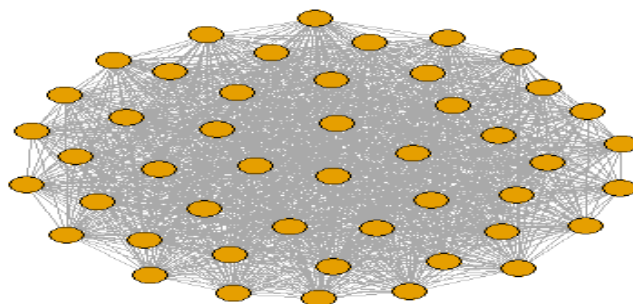


Figure 1: A Network Model (Source: Authors' depiction)

Several metrics can be used in network analysis. In the following, there are brief definitions of the metrics utilized in our analysis:

**Node:** A node is a point in a network where two or more lines intersect. In network analysis, nodes are used to represent the vertices of a graph, and edges between nodes are used to represent relationships between vertices. The node has no inherent meaning but is useful as it can represent a point in a network. Nodes can be connected by links that represent relationships between nodes. The nodes in this work are people.

**Weight:** Weight in social network analysis refers to assigning a numerical value to the relationships between nodes in a network. The weight of a relationship reflects the importance or intensity of the connection between two nodes. Weighted can indicate several factors, such as the duration of the relationship, the frequency of interaction, the emotional intensity of the relationship, or the economic value of the relationship. Using the Minkowski metric, weighted is calculated as in equation (1) (Biswas and Sharma 2020, 16).

$$d_p(x, y) = \left( \sum_{i=1}^n w_i (x_i - y_i)^p \right)^{1/p} \quad (1)$$

**Weighted degree:** The Weighted Degree measures a node's importance in a network. It is calculated by multiplying the degree of a node by the weight of the edge connecting the node to other nodes (Thai, Nguyen, and Shen 2015). This measure is used to identify the most important nodes in a network (Zhou et al. 2020). The weighted degree of a  $v$  vertex is calculated as in equation (2) (Fukunaga and Nagamochi 2010, 246).

$$d_w(v; E) = \sum_{e \in \delta(v; E)} w(e, v) \quad (2)$$

**Degree centrality:** Degree centrality measures a node's links in a network. It is a simple way to measure the importance of a node (Chen, Dress, and Yu 2014). For each  $i$  vertex, degree centrality in a network is calculated as follows (Srinivasan et al. 2020).

$$D(i) = \frac{1}{n-1} \sum_{j=1}^n A_{ij} \quad (3)$$

In the (3) equation,  $A_{ij}$  is the  $ij$  –  $th$  element of the adjacency matrix.

**Closeness:** Closeness measures the distance between two nodes in a social network. It is computed as the sum of the distances between the two nodes and all their friends. The closeness of a  $v$  vertex is calculated as in equation (4) (Metcalf and Casey 2016).

$$C(v) = \sum_{w \in G} \frac{1}{d(v, w)} \quad (4)$$

**Closeness centrality:** Closeness centrality is a metric that shows how close a node is to all other nodes in the network. Using this metric, important nodes in the network are determined. Examples of closeness centrality might include identifying the most important people in a social network, the most important nodes in a communication network, or the most important nodes in a business network (Zhou et al. 2020).

**Betweenness centrality:** Betweenness centrality expresses a node's importance in connecting other nodes (Baker 2018). Nodes with high betweenness centrality are more important for connecting different network parts than nodes with low betweenness centrality. An example of a node with high Betweenness centrality would be a connector of two different groups of people, such as a bridge between two neighborhoods. The betweenness centrality of a  $v$  vertex is calculated as in equation (5) (Zhao and Cen 2013).

$$b(v) = \sum \frac{\sigma_{uw}(v)}{\sigma_{uw}} \quad (5)$$

Where  $\sigma_{uw}$  is the number of shortest paths between vertices  $u$  and  $w$ .  $\sigma_{uw}(v)$  indicates the shortest paths between  $u$  and  $w$  passing through the  $v$  vertex (Zhao and Cen 2013).

**Clustering Coefficient:** The clustering coefficient measures the amount of clustering in a network. It is a measure of the strength of the connections between nodes. The clustering coefficient is calculated by dividing the number of connections between nodes by the total number of possible connections (Makhijani et al. 2022). In network analysis, the clustering coefficient is calculated as in equation (6) (Gürsakil 2016).

$$C_i = \frac{2L_i}{k_i(k_i - 1)} \quad (6)$$

Here  $L_i$ ,  $i$  specifies the number of connections between node  $k_i$  neighbors.

**Eigenvector centrality:** "Eigenvector centrality is a measure of the importance of a node in a network. It is calculated by multiplying the node's degree by its eigenvector centrality score. This score is determined by how close the node is to all other nodes in the network" (Thai, Nguyen, and Shen 2015, 299). Nodes with high eigenvector centrality scores are more important than nodes with low scores. Eigenvector centrality is calculated mathematically as in equation (7) (Salman 2018).

$$\lambda C = AC$$

$$(C_i)^E = \frac{1}{\lambda} \sum_{j=i}^n \alpha_{ij} (C_j)^E \quad i = 1, 2, \dots, n \quad (7)$$

In the equation,  $A$  is the neighborhood matrix of the network, and  $\lambda$  is the largest eigenvalue of the  $A$  matrix. Also, nodes  $j$  are neighbors of node  $i$ .

## EMPIRICAL DESIGN

We searched for the ties between President Erdogan and affiliated politicians/leaders. We visualized the complex relationship between nodes in the networks (Figures 2, 3, 4, 5, 6, 7) using the Fruchterman-Reingold algorithm and open-source Gephi software. These networks are

formed by drawing a line between the names of two or more people mentioned in the news. Each node in the network represents an individual. We limited the number of nodes in the networks to 250 for interpretation. Since real-life events are reflected in the news media with time delay, we conduct our analysis yearly. Thus, the yearly drawn networks and the calculated measurements are like summaries of the many news published in a certain period.

In our analysis, the networks are non-directional networks, like having two people in the same photo, news, or text, like co-authoring or kinship networks. The lines drawn between the nodes might represent a positive, negative, or neutral relationship between people (nodes). It means that the networks themselves cannot provide information yet requires interpreting. Similarly, the groups formed in the networks partly shed light on why the groups formed - conjectural or permanently - and how nodes are included/excluded – issue-centric or multi-dimensional, about which the networks only visualize the complex relationships, still entailing a detailed theoretical examination.

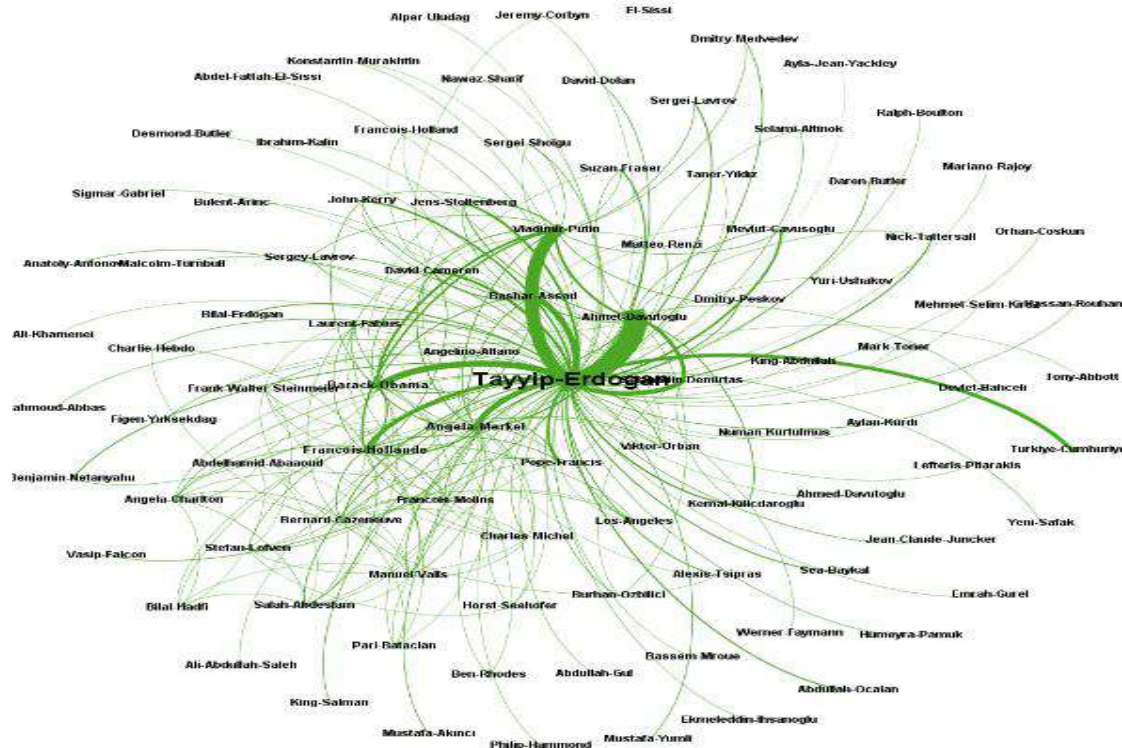
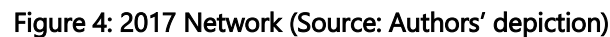
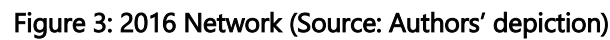


Figure 2: 2015 Network (Source: Authors' depiction)





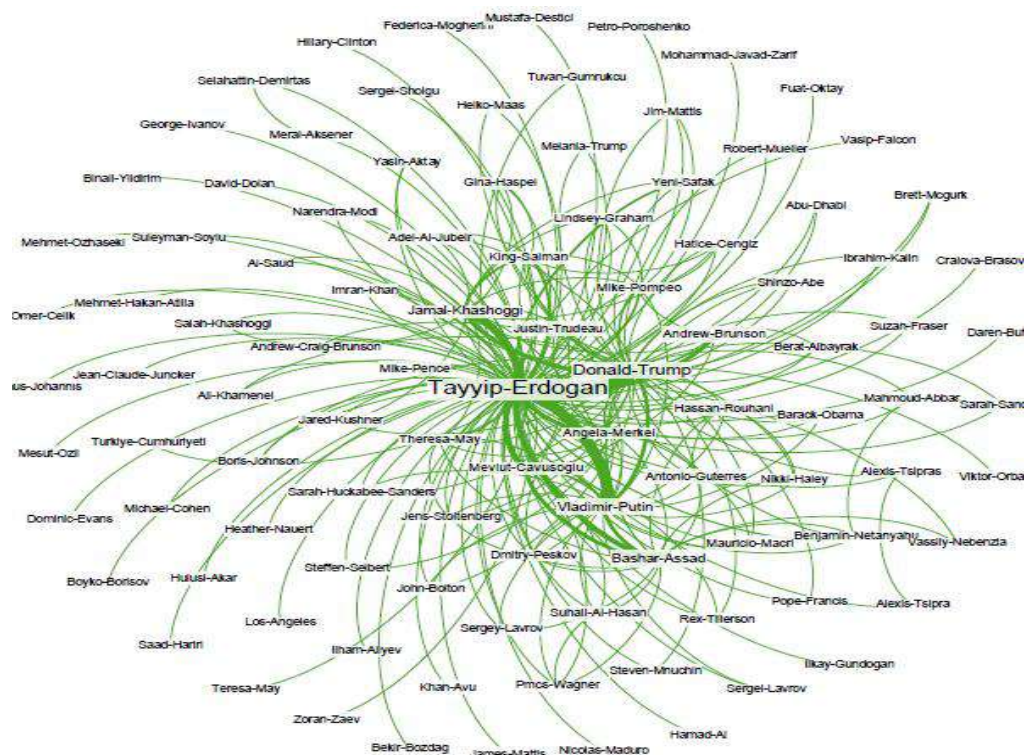


Figure 5: 2018 Network (Source: Authors' depiction)

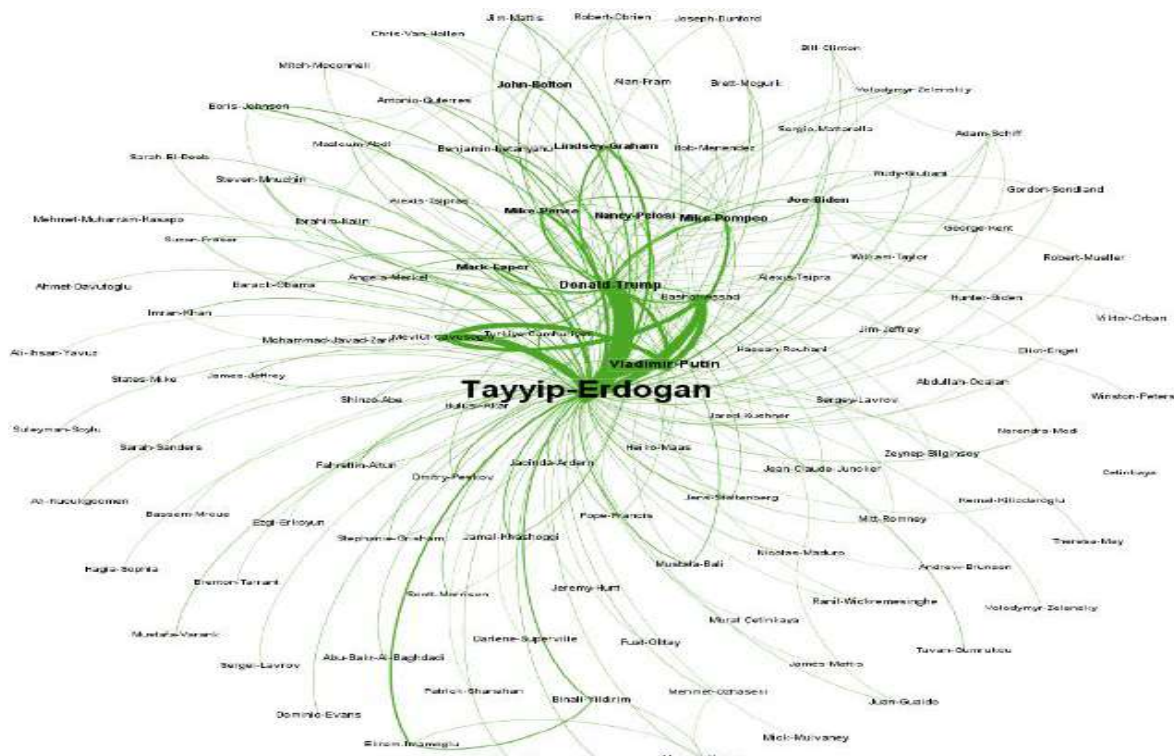


Figure 6: 2019 Network (Source: Authors' depiction)



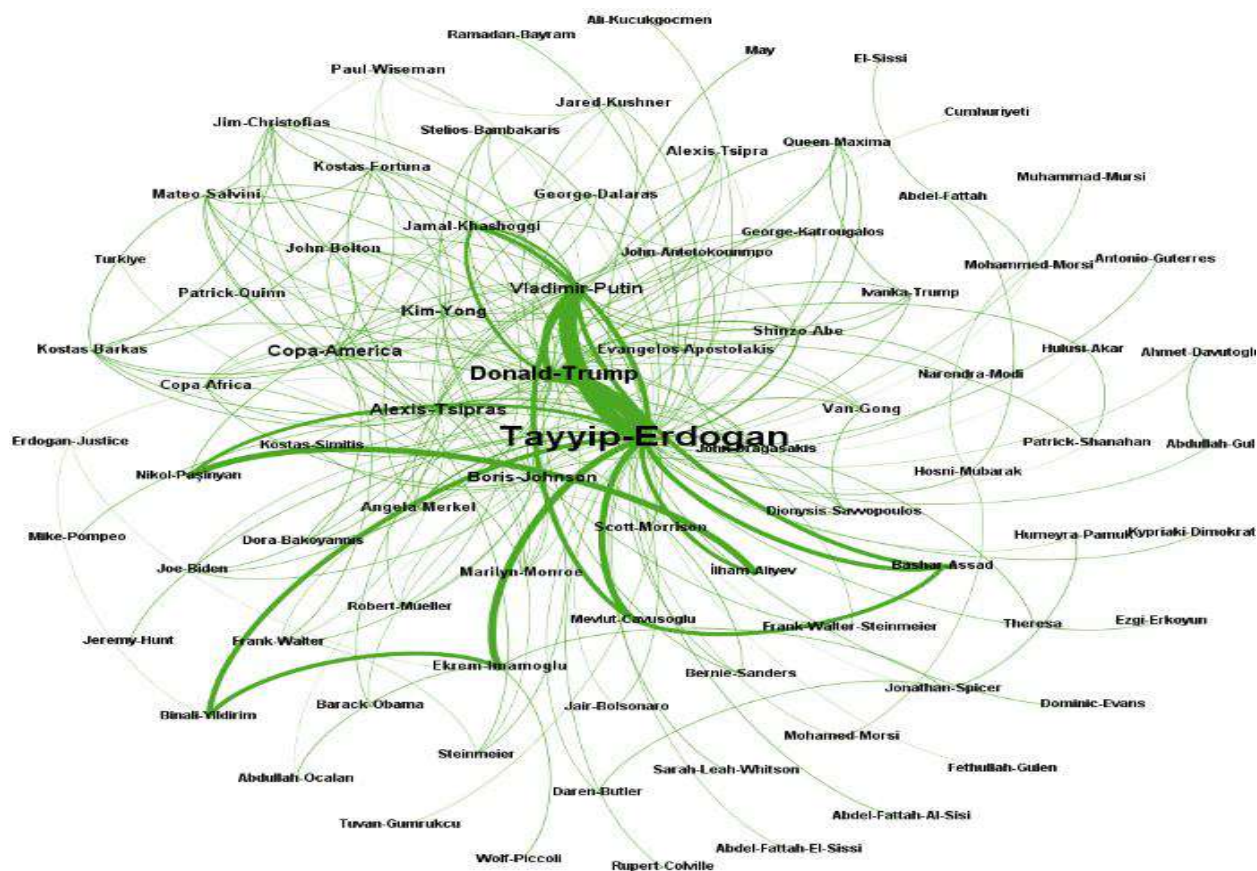


Figure 7: 2020 Network (Source: Authors' depiction)

Therefore, we first measured the degree distributions to test the power-law distribution. The degree distributions of the networks we draw demonstrate that networks are independent and conform to the power-law distribution, i.e., a small number of nodes have several linkages in networks, while most nodes have fewer ties. In addition, when the figures below are examined, it is seen that all shapes are defined with a curve from top left to right. The visual form also shows that networks are independent of scale. Regarding power theory, it can be concluded that power is concentrated in the center of the networks of the analysis (Figures 8, 9, 10, 11, 12, 13).

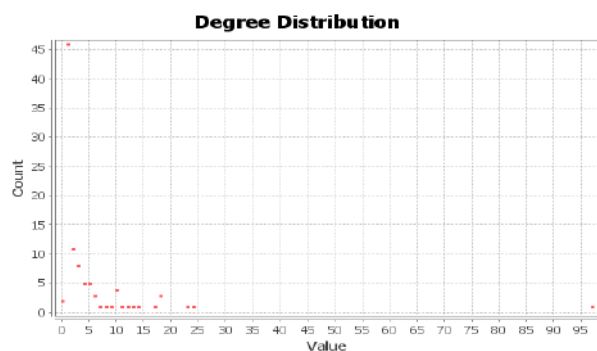


Figure 8: Degree Distribution 2015

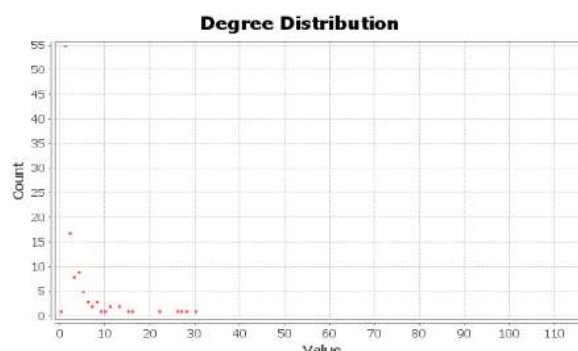


Figure 9: Degree Distribution 2016

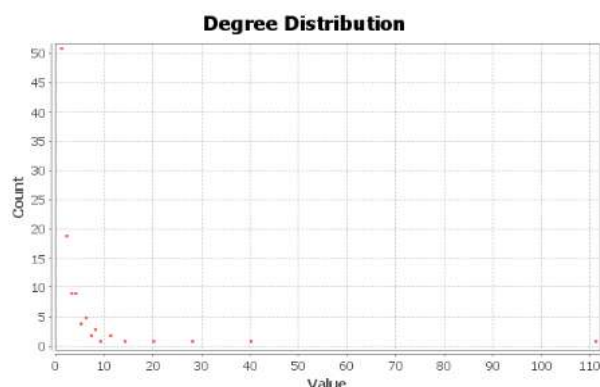


Figure 10: Degree Distribution 2017

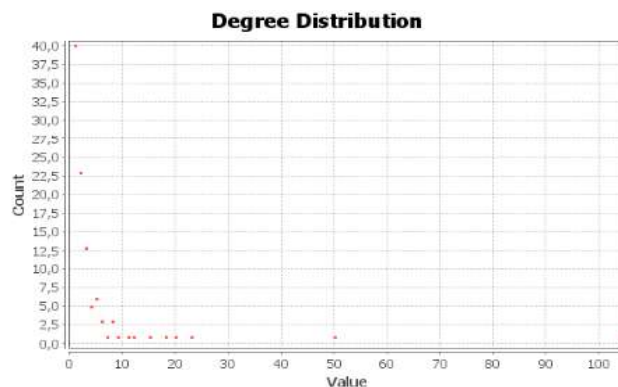


Figure 11: Degree Distribution 2018

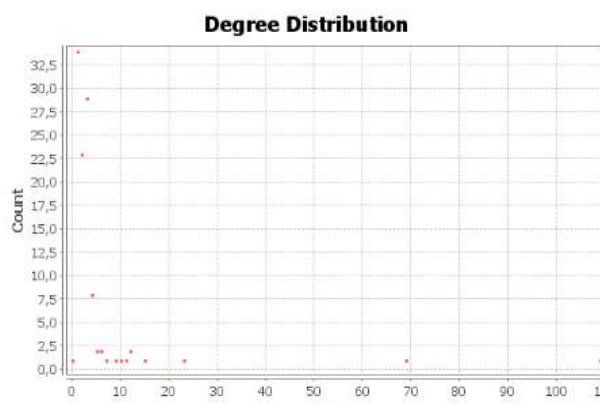


Figure 12: Degree Distribution 2019

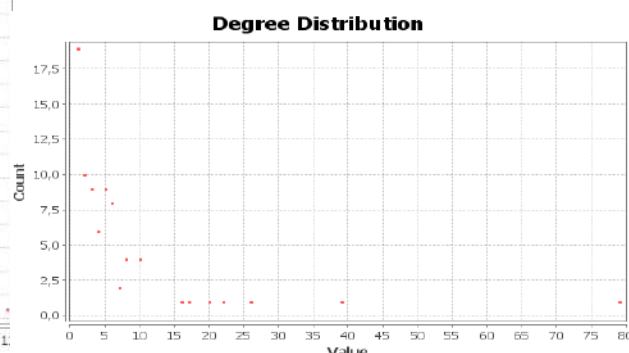


Figure 13: Degree Distribution 2020

Second, we calculated the weighted degrees of nodes in the networks to identify the changes in the relationship - such as closeness and density - between the nodes (Table 1). Based on the relationship between nodes in news media networks, we tracked the annual changes and identified general trends regarding Turkey's foreign policy activism. Table 1 demonstrates the changes in weighted degrees of nodes in the networks we draw for the period between 2015 and 2020. Since we searched for the affiliated politicians, bureaucrats, and leaders with President Erdogan, the weight of his node is the highest in each network. The changes in weighted degrees imply how the relationships between the nodes change in closeness and density.

Third, we conduct a modularity analysis to identify clusters in the news media networks. Modularity is a cluster quality metric measuring whether the number of in-cluster edges exceeds its expected value and reflects the harmony of nodes within a community. Furthermore, based on the clusters formed in the media networks, we explored the changes and continuities in Turkey's cooperation with other countries.



**Table 1: Weighted Degrees of Nodes between 2015 and 2020 (Source: Authors' depiction)**

Weighted Degrees of Nodes in 2015		Weighted Degrees of Nodes in 2016	
Tayyip-Erdoğan	0.850	Tayyip-Erdogan	0.603
Ahmet-Davutoğlu	0.148	Vladimir-Putin	0.114
Vladimir-Putin	0.123	Binali-Yildirim	0.103
Francois-Hollande	0.094	Barack-Obama	0.103
Angela-Merkel	0.093	Angela-Merkel	0.074
Barack-Obama	0.090	John-Kerry	0.066
Bashar-Assad	0.071	Bashar-Assad	0.061
David-Cameron	0.045	Donald-Trump	0.044
Bernard-Cazeneuve	0.044	Mevlüt-Cavuşoğlu	0.043
Selahattin-Demirtaş	0.042	Theresa-May	0.023
2017		2018	
Tayyip-Erdoğan	0.624	Tayyip-Erdoğan	0.600
Donald-Trump	0.208	Donald-Trump	0.251
Vladimir-Putin	0.123	Vladimir-Putin	0.129
Angela-Merkel	0.086	Jamal-Khashoggi	0.106
Mevlüt-Cavuşoğlu	0.055	Bashar-Assad	0.103
Binali-Yildirim	0.049	Mevlut-Cavusoglu	0.075
Rex-Tillerson	0.033	Angela-Merkel	0.055
Mahmoud-Abbas	0.032	King-Salman	0.044
Benjamin-Netanyahu	0.028	Mike-Pompeo	0.043
Theresa-May	0.027	Andrew-Brunson	0.042
2019		2020	
Tayyip-Erdoğan	0.521	Tayyip-Erdoğan	0.540
Donald-Trump	0.270	Donald-Trump	0.247
Vladimir-Putin	0.151	Vladimir-Putin	0.231
Bashar-Assad	0.131	Bashar-Assad	0.095
Mevlut-Cavusoglu	0.089	Mevlut-Cavusoglu	0.085
Mike-Pence	0.045	Jamal-Khashoggi	0.077
Mike-Pompeo	0.041	Ekrem-İmamoglu	0.073
Lindsey-Graham	0.035	Copa-America	0.062
Mark-Esper	0.031	Nikol-Paşinyan	0.058
Joe-Biden	0.031	Ilham-Aliyev	0.056

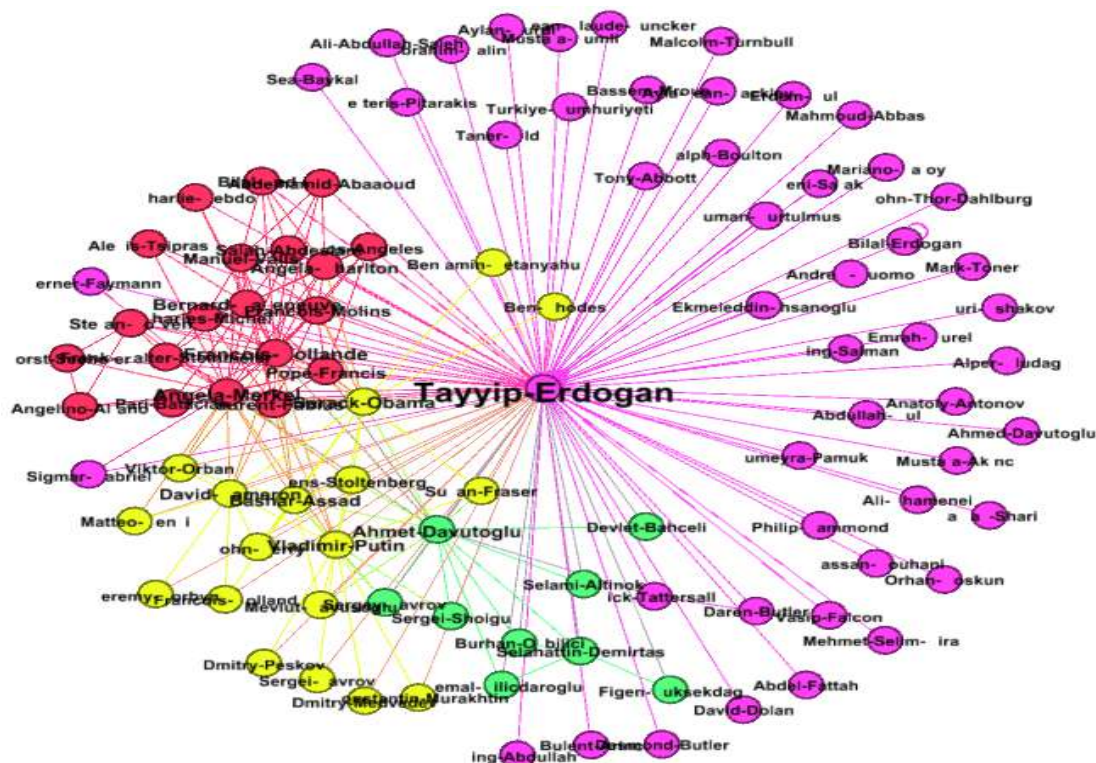


Figure 14: Modularity 2015 (Source: Authors' depiction)

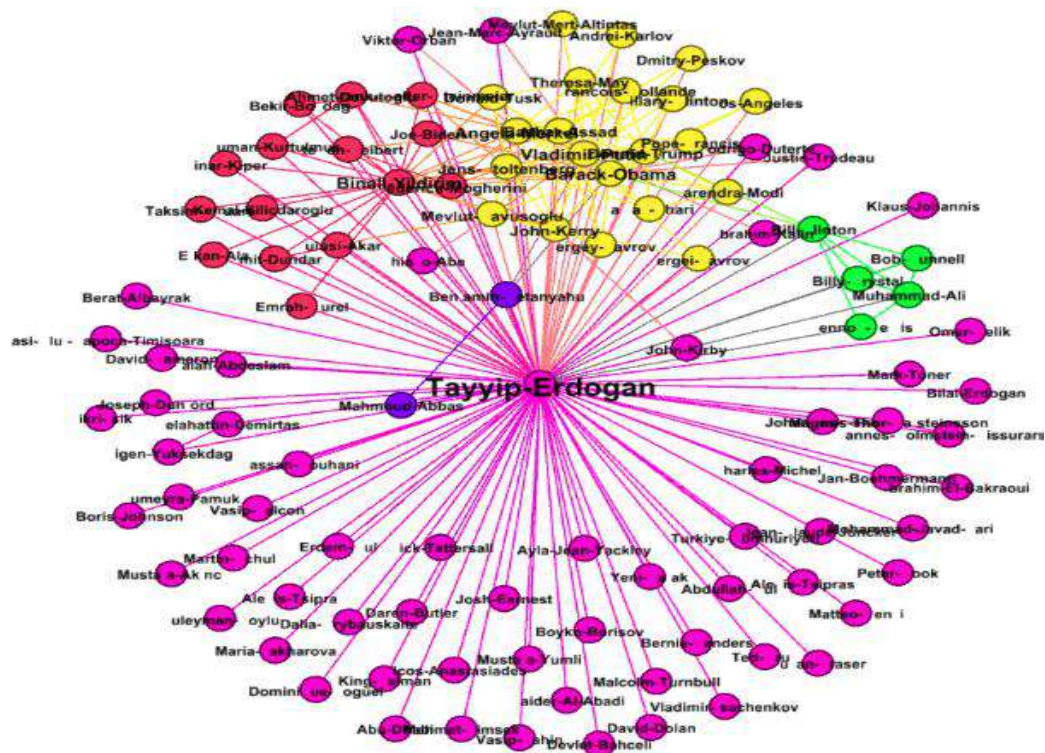


Figure 15: Modularity 2016 (Source: Authors' depiction)



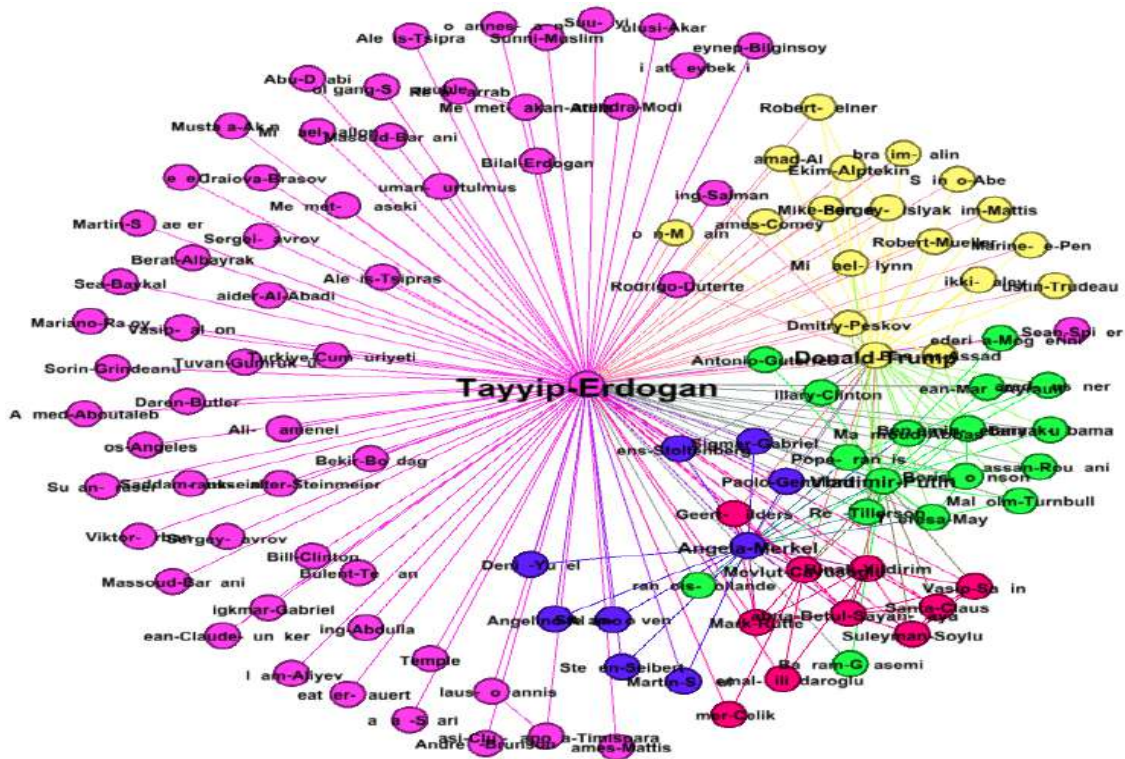


Figure 16: Modularity 2017 (Source: Authors' depiction)

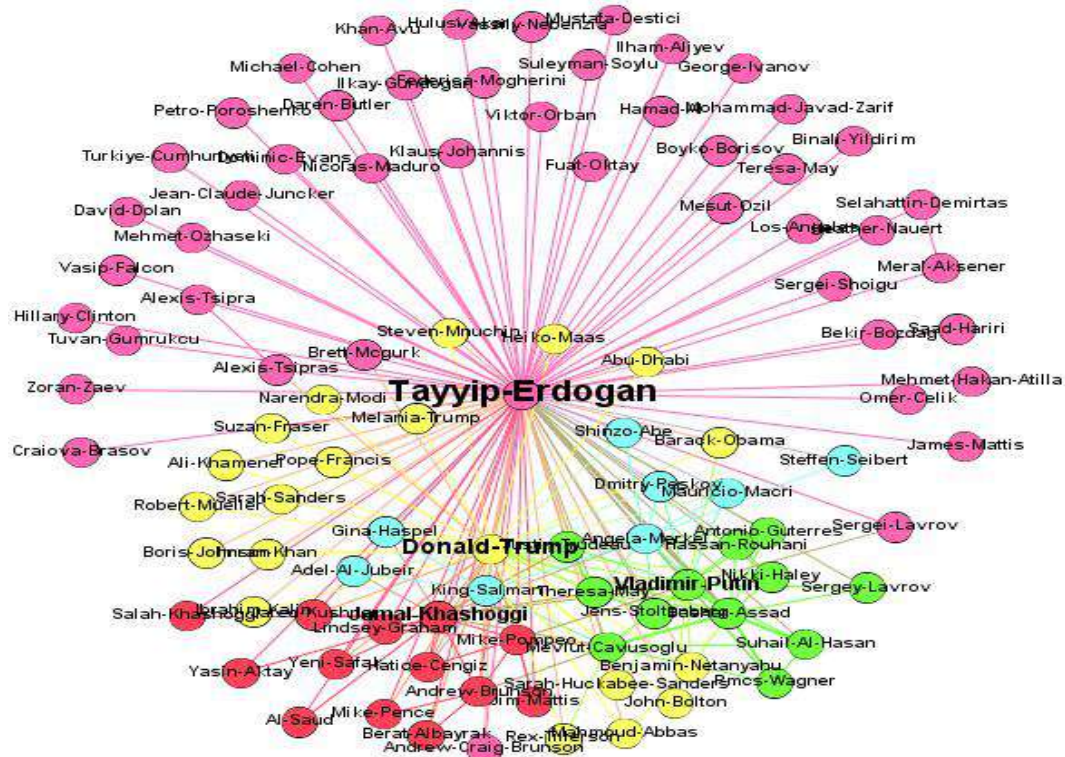


Figure 17: Modularity 2018 (Source: Authors' depiction)



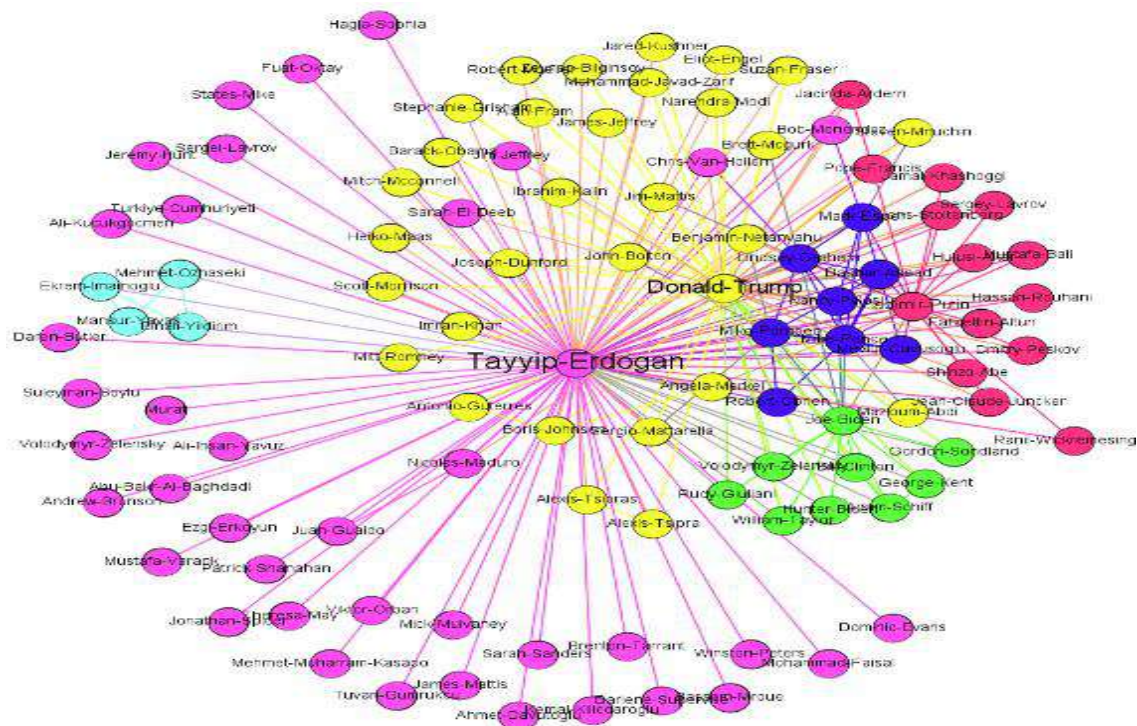


Figure 18: Modularity 2019 (Source: Authors' depiction)

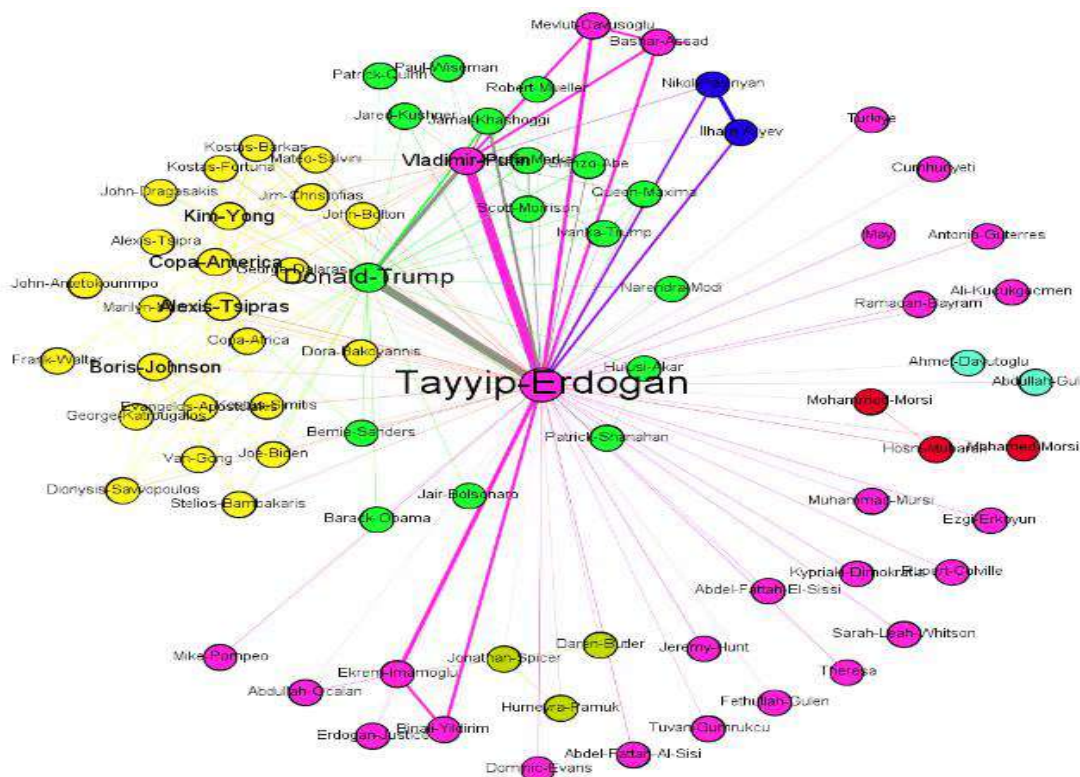


Figure 19: Modularity 2020 (Source: Authors' depiction)

## DISCUSSION

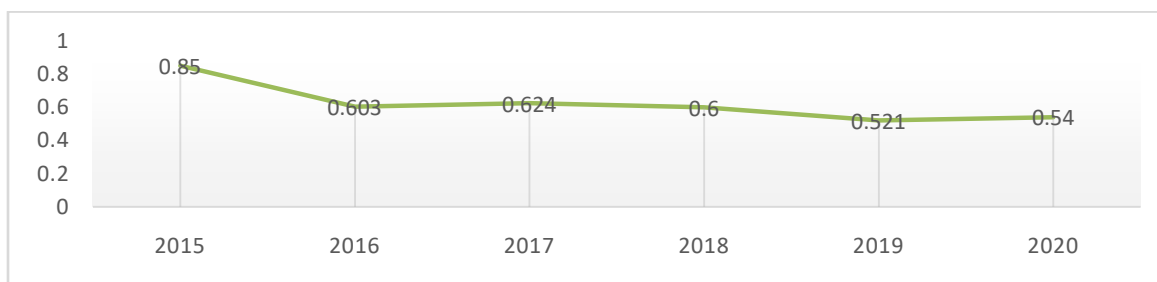
In the role theory section, we argued that role performance reflects the degree of congruence between national role conceptions and systemic role prescriptions. Any incongruity between these dynamics results in a serious conflictual role performance.

Accordingly, the weighted degrees (Table 1) show that network analysis enables the successful capture of the repercussions of international as well as local developments such as:

1. The impact of the presidential system and the elimination of the Prime Minister's office left President Erdoğan the most prominent figure in TFP, which is demonstrated by the gradual diminishing of the weighted degrees of Prime Ministers Ahmet Davutoglu in 2015 and Binali Yıldırım in 2016 and 2017.
2. The Transatlantic support for Turkey's role has changed based on the changes in weighted degrees of Obama in 2015-2016 and Trump later on.

With the Trump administration's come to power, the density between the nodes of Erdogan and Trump increased compared to that of the Obama administration. Network analysis captures the policy change produced by the decision of the Trump administration to take an active role, criticizing the retrenchment policies of the Obama administration. However, the increase in the density between Erdogan and Trump's nodes did not refer to a supportive but competitive role prescription for Turkey, as Turkey's military operations into northeastern Syria attracted harsh reactions from the Trump administration. Table 1 demonstrates that the weight of Bashar al-Assad's node increased in 2018 and 2019 (0.103 and 0.131, respectively) when the JDP elites adopted an interventionist attitude regarding the Syrian crisis. However, its weight seems to diminish relatively in 2020 (0.095) compared to previous figures after President Trump's letter urging Turkey not to continue its military operations in northern Syria. Transatlantic support has a downward trend, as seen in Graph 1. It can be translated as Turkey gradually losing its appeal as a model country in the ME, which we take as a significant indicator of Turkey's conflictual role performance in this period.

**Graph 1: Change of President Erdogan's Weighted Degree in 2015-2020 (Source: Authors' depiction)**



3. The national role conception of activism shifted towards cooperation with non-western actors which is demonstrated by the changes in Putin's weighted degrees.

There is also a concomitant rise in the density between the nodes of Erdogan and Putin. This proves that network analysis captures the shift of the JDP elites' conception of activism toward an alliance with the non-western actors when the Transatlantic systemic role prescriptions for Turkey did not satisfy Turkey's security concerns regarding the Syrian crisis.

According to modularity analyses of networks, the number of network modules is four in 2015, five in 2016, 2017, and 2018, six in 2019, and seven in 2020 (The visual graph of five modules is drawn in Figures 14, 15, 16, 17, 18, 19). Based on the clusters in the networks, we see that the algorithm successfully put nodes in different groups according to their subjects. For instance, in the 2018 network, Janal Khashoggi (red) and Priest Andrew Brunson (pink) are in different clusters. Similarly, in the 2019 network, Ekrem İmamoğlu, Binali Yıldırım, and Mehmet Özhasseki are in the same cluster (turquoise).

The findings based on the modularity analysis prove the validity of the following conceptual arguments:

1. The systemic role prescriptions for Turkey shifted by the changes emanating from the Trump administration policy in the ME. The modularity analyses of the 2015 and 2016 networks (Figures 20 and 21, respectively) demonstrate that Obama was in the same cluster (yellow) as Assad, while Erdogan was in a different one (pink). On the other hand, in the 2017 network (Figure 22), Trump and Assad were in the same cluster (yellow), while Putin was in the green one and Erdogan in the pink one.
2. These changes resulted in the relative exclusion of Turkey from collaboration with the Transatlantic Community due to a mismatch between the JDP elites' activist national role conceptions and Transatlantic systemic role prescriptions for Turkey. The 2018 network (Figure 23) demonstrates yet another shift as Erdogan was in the pink, Trump was in the yellow clusters, and Assad and Putin were in the green cluster. We interpreted these shifts as hinting about the JDP elites' conception of activism turning into a conflictual one, especially the US prescriptions. For in 2019 network (Figure 24), Mevlüt Çavuşoğlu and Assad were in the same cluster (blue), and Putin, Hulusi Akar, and Hassan Rouhani were in the same cluster (red). On the other hand, Trump, Putin, and Erdogan were in different clusters (yellow, red, and pink, respectively). The findings demonstrate that modularity analysis successfully captured the political developments of the Syrian crisis, including Turkey's beginning of military cooperation with Russia while forcing it to cease its interventionist and unilateral military operations.
3. The appeal of improving strategic alliances with non-western actors increased for the JDP elites. The mismatch between national role conceptions and systemic role prescriptions peaked when Turkey purchased the S-400 Missile system from Russia. This resulted in Turkey's suspension of the F-35 fighter jet program and the US imposition of the CAATSA sanctions. The findings based on the 2020 network (Figure 25) successfully grasp these political developments by putting Erdogan, Putin, and Assad in the pink cluster while Trump is in the yellow one. We argue that this definite shift in Turkey's strategic partnerships, as seen from the clusters in the 2020 network, means that the central positioning of the Transatlantic link in TFP is seriously undermined.

## CONCLUSION

In this paper, we analyzed the JDP's ME policy between 2015 and 2020, utilizing the concept of role conflict. We empirically tested conceptual findings by using network analysis. Accordingly, our framework's advantages are two-fold. First, role conflict is used to conceptualize the JDP's ME policy by bringing together the systemic and agential dynamics of the foreign policy process. Second, exploiting the big data from the GDELT project, network analysis provides a deeper understanding of the JDP'S foreign policy role performance in the ME policy for the period of 2015-2020 by enabling the empirical testing of key dynamics in our framework – the positioning of the Transatlantic link and the conception of activism.

Our analysis showed that the JDP's national role conceptions of activism in the period of 2015–2020 were different from the Transatlantic systemic role prescriptions for Turkey after empirically testing the conceptual justifications of the role conflict concept. Nonetheless, the importance of the Transatlantic Link appears to have not changed for JDP decision-makers.

To conclude, utilizing network analysis to interpret what big data tells about international politics promises a rich yet underexplored research line and enables empirically testing the theoretical arguments. In the International Relations discipline, whereby the vitality of using computational methods grows constantly, we believe that our study signifies a stirring attempt. However, we fully accept that our empirical analysis has some gaps and weaknesses. In this context, we think that additional research using different methods and datasets, with a focus on some other countries (or leaders), can enhance this analysis.

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This article does not contain any studies with human participants performed by any authors.

### **Statement on the Welfare of Animals:**

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# FACTORING THE SMART POWER IN THE INDIA-EUROPEAN UNION ENGAGEMENTS: A SCOPING REVIEW

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**Abstract:** Power is a critical factor in several types of diplomacy. India-EU relations are a classic case of how changing geopolitics prompted diplomatic acumen. This scoping review assesses the changing relations of both partners as a manifestation of Smart Power. The dynamic relations from normative-based to pragmatic and inclusive interests based are evaluated. Their value-based relations are put under international relations theories. Their changing factors of cooperation are used to justify their smart diplomacy, where contemporary relations are less likely to be affected by multilateral interests. To solidify claims of smart power in their relations, the recent TRIPS waiver schism illuminated health diplomacy between the two regions. This health diplomacy discourse promotes smart power diplomacy between India and the EU, where new avenues of cooperation emerge despite pandemic disagreements. The article explores how hybrid power is better than soft and hard power in silos by systematically searching and selecting the existing knowledge in the contemporary context.

**Keywords:** Hard Power; Soft Power; Smart Power; European Union; Normative Power; Health Diplomacy

## INTRODUCTION

European Union (EU) is a regional organization with supranational characteristics placing norms and principles on its Member States. European Commission President Ursula von der Leyen's two-day visit (25-27 April 2022) to New Delhi for the first official visit amidst the Russia-Ukraine crisis and after the divergences over the Intellectual Property Rights (IPR) waiver proposal in the WTO had added much significance about the current scenario. The explicit aim of the visit was to further talks and cooperation on climate change after the COP26 conference, trade negotiations, and the security imperatives. European Commission President Ursula von der Leyen's opening address in Raisina Dialogue underlined the conventional negotiations viz. trade, sustainable development, and normative commitments, to the strategic cooperation envisioning democratic geopolitics in the Indo-Pacific region (ANI 2022).

Relations between India-EU date back to the 1960s, wherein the former is among the first countries to establish diplomatic relations with the European Economic Community (MEA 2013). Traditionally, the relations were characterized and manifested through political dialogues, parliamentary interactions, people-to-people contacts, and meager economic and trade relations with more tariff and non-tariff barriers. The relations were further upgraded to "Strategic Partnership" at the 5<sup>th</sup> India-EU Summit at Hague in 2004 (Council of EU 2004), by

which the two regions reiterated their strong commitment to democracy, pluralism, the rule of law, multilateralism with the strategic partnership in combating terrorism with deepened international consensus against terrorism.

Despite the strategic partnership, the relations between India and the EU vary diversely, which impedes the supranational characteristics of the latter. Scholars like Jain (2009, 173-188) metaphorized the relations driven by “small circles” in Brussels, dividing the whole member nations into three circles with a hierarchical setup based upon the stakes involved. The advantage of having strategic relations with multiple nations through the EU’s tunnel seems unrealized. The deep impacts of colonialism still haunt the emotional connection for which Ashis Nandy uses the word “the intimate enemies” (Nandy 1989). This deep-seated emotion sometimes is coupled with the hegemony of Europe in the name of development, making their partnership political rather than collaborative. The EU’s normative, ethical, and civilian power have greater penetrating impacts over communities with great admiring potential. Theorists like Galtung (1973) have discussed this value, and Galtung predicted that the European Community would eventually come to be known “just as Europe”. However, the spread of these normative powers and impacts had been experienced by many post-colonial countries like India as interventionist policies violative of state sovereignty. This normative mission of the EU is seen as engaging itself in the “practice of othering”, whereby it treats itself as superior to others in universal principles (Jain 2019, 173-188).

The EU is increasingly becoming a norms exporter with its missionary zeal to propagate social, economic, and ideological norms at the global level (Jain 2019, 173-188). Their principle of sovereignty-sharing with cooperative governance is believed to solve the problems of global governance aptly to be considered as their *moralpolitik*. The value of shared sovereignty for the mutual prospects of its members, which the EU possesses, is similar to the basis on which the multilateral institutions were established. For this, the constructivist thinkers in international relations theory are best suited. Alexander Wendt’s emphasis on the importance of shared ideas and values in constructivist theory can be used to draw an analogy with EU’s integration based upon democratic political association. Wendt stressed the values and norms as determinants of association with his dissension towards material forces. He does not deny the existence of material elements, but for him, these elements do not determine the human association, naming his assumption as “Rump Materialism” (Mengshu 2020; Wendt 1994, 388). Wendt’s constructivist theory exemplifies its relations with India, where both partners have values parallelism on global governance with converging beliefs and a shared vision for global politics. Time and again, India has acknowledged that “a strategic relationship between the two is special because both share values and not only interests” (Jain 2019).

The relationship based upon norms convergence has limitations and frequently falters in India-EU relations. The repeated instances of the EU’s concern for human rights for minorities in India revive the deep-rooted colonial hegemony of Europe among Indian policymakers, thinkers, commentators, etc. For many authors (Goodwin and Spittle 2002, 225-249; Kostakopoulou 2005, 233-267; Averre 2009, 1692), the EU is believed to follow the process of circulating the norms incrementally and then building the entire corpus of norms. Moreover, the norms not incorporated globally persist in being incorporated bilaterally in its quest to attain greater international recognition (Jain 2019). However, these attempts are sometimes construed as a



breach of sovereignty. Many EU countries have criticized India for not supporting the democratic transition or sometimes backing the authoritarian military regimes like in Myanmar despite its security concerns. Consequently, labeling India following *realpolitik* instead of *moralpolitik* commitments. For this, Tharoor argues that India does not need “ethical lessons” from Europe, which has “long coddled” military dictators in its neighborhood, notably in Islamabad (Tharoor 2007; Cheesman, Farrelly, and Wilson 2014).

In order to further heightened the relations between the two regions, the plan was to upgrade their relationship to a strategic level in the inaugural India-EU summit 2000 in June. To upgrade India-EU relations incongruence with its security strategy, the two partners endorsed the strategic partnership at the 5<sup>th</sup> India-EU Summit 2004 (Council of EU 2004). The Summit adopted political declarations and the Joint Action Plan (JAP) divided into four sections (politics, economic policy, trade and investment, and cultural and academic matters) (Council of EU 2004). This plan included several points with incrementally changing objectives according to need and time. The 15<sup>th</sup> India-EU Summit endorsed an “India-EU Strategic Partnership: A Roadmap to 2025” common roadmap for the next five years (MEA 2020). The strategic partnership is an elusive concept with varied meanings, making their strategic plan more accommodating of newer challenges and prospects. The augmenting security cooperation and exchanges exhibit the dynamic India-EU relations contrasting with the traditional norm-based relations.

In the theory of International Relations, to secure national interests, the concept of power becomes quintessential, leveraging diplomatic relations. The dynamic International Relations theory has ended the dichotomous nature of power, i.e., soft and hard power, with the advancement of smart power, a relatively novel concept used by Nossel (2004). India-EU relations used to exhibit the evolving nature of the relationship with changing diplomatic stances demonstrates the practice of smart power. From the long-established value-based relations to the existing strategic relations, smart power diplomacy is discernible. Both sides argue that evolution manifests the shared values or are the values in practice (Sautenet 2012, 123-146; Biscop 2016).

India-EU relationship building upon the directions of “India-EU Strategic Partnership: A Roadmap to 2025” presents a comprehensive cooperation document. Moreover, the launch of the European External Action Service (EEAS) (1 December 2010) is an embodiment of the EU’s smart power with its non-EU counterparts (MEA 2020; EUEA 2020). Another instance of smart power manifestation was the recent dispute over the TRIPS waiver in the WTO between India-EU, which did not sever their relationship in other domains of cooperation (TNN 2020). This makes an important reason to discuss the health diplomacy between the two, which has bilateral consequences and global corollaries with thriving smart power impressions.

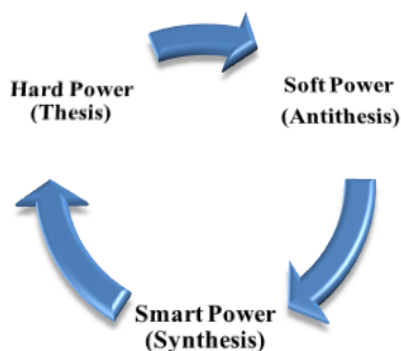
### CONCEPTUALIZING SMART POWER

The concept of power in international relations holds a central position and is defined in multiple ways. This concept was core to realist theorists like Machiavelli (1993) and Morgenthau (1952), according to whom the power is the end and means itself. Power is employed to achieve national interests and is the objective of the nation-state as well. Thus, in international politics, power is the “ability to influence another to act in ways in which the entity would not have acted



otherwise" (Morgenthau 1952). Power is a constituent of many elements with various determinants of power. By distinguishing between soft and hard power by Joseph Nye, soft power was more clearly elaborated. According to Nye (1990), hard power involves "the ability to use the carrots and sticks of economic and military might to make others follow your will" (p. 160). Soft power implies co-optive power, particularly "the ability to achieve goals through attraction rather than coercion" (Nye 1990, 153-171). However, due to the structural changes in International Politics with the inherent limitations of both these powers, the dichotomy between the two seems to be fading. This increased demand by various subject experts for the change in foreign policy conduct due to the mutually reinforcing nature of both these powers. The debate over the types of power and the need for their repair is flawed, according to Wilson III (2008). He believes that the proponents of both powers have some inherent reticence, whereas the proponents of soft power made their positions politically naïve and institutionally weak. In contrast, the hard power proponents have ignored or subsumed the national power outside their purview (Wilson III 2008, 117).

The dichotomous debate over the type of power resulted in badly served national interests. Various inherent anomalies of hard and soft power necessitated the evolution of Smart Power. The analogy of power evolution can be compared with the philosophy of Hegelian Dialectics, where the constant pursuit for the reduction of anomalies leads to the evolution of knowledge (Mueller 1958, 412). Figure 1 presents an analogy of dialectics and power evolution.



**Figure 1: The Evolution of Power through Analogy of Dialects (Source: Authors' depiction)**

The concept of smart power was first used by Suzanne Nossel, mostly in US foreign policy. For Suzanne Nossel (2004), smart power for the US is knowing that using one's hand as a tool for national interests is not always good. It can be furthered through alliances, international institutions, careful diplomacy, and the power of ideals (p. 131). In the CSIS Commission, Nye defines smart power as "the capacity of an actor to combine elements of hard power and soft power in mutually reinforcing ways such that the actor's purposes are advanced effectively and efficiently" (Nossel 2004, 153-171). Smith-Windsor (2000) also highlighted how the dichotomous division of power serves no purpose for countries like Canada. Wilson (2008) defines it as:

A genuinely sophisticated smart power approach comes with the awareness that hard and soft power constitute not simply neutral 'instruments' to be wielded neutrally by an enlightened, all-knowing, and

independent philosopher king; they themselves constitute separate and distinct institutions and institutional cultures that exert their own normative influences over their members, each with its own attitudes, incentives, and anticipated career paths (pp. 51-56).

Various manifestation of this power exists like the strategy followed by the People's Republic of China (PRC), where they pursue military rise by strategizing the historical discourses of "century-old humiliation" on the other hand pursuing relations with African nations due to the minerals imperatives by following the "charm campaign" Josh Kurlantzick (2007) or the "chequebook diplomacy".

Smart power is defined differently by many diplomats, but the exact meaning is identified by its application, where its design and conduct vary based on the institutional and political setups. Soft power is less funded, less in proportion, and less institutionalized than hard power (Kearns 2011, 65-85). This makes the smart power's role essential as it formulates rational foreign policy. Smart power recognizes the limitations of each power and balances the complicated institutional structure which thwarts the asymmetry between hard and soft power. Political challenge to smart power exists as the supporters for the hard power are more making the asymmetry. For them, soft power is just wasteful and riskier investment with no tangible outcomes. Foreign policy must be efficient, robust, and dynamic (Brynteson 2014).

Smart power advocates the efficient use of both powers in a politically and institutionally compelling language. Smart power is a strategically formulated wielded power based upon information cognizance. Thus, smart power envisages that soft power advocates must advance national interests with their methods and some Machiavellian elements. In contrast, the hard power proponents must favor good or public diplomacy, which can prevent bloody conflicts.

### SMART POWER: INDIA-EU PERSPECTIVES

Indian diplomacy has been a mix of both powers. However, the effectiveness of this received colored responses or the smartness by lumping elements of traditional Buddha's values, and the Kautilyan statecraft lacked the persuasiveness it aimed for (Singh and Singh 2019, 169-182). The maintenance of bilateral relations with various countries based upon the hyphenated foreign policy, at various times, proved costly as its failure to sail in two boats simultaneously (Taneja 2018). The hyphenated diplomatic relations with Iran-US, Israel-Palestine, and Gulf nations were manifestations of it. Bilateral relations with Nepal, where the soft power projection was an easily proven failure during the Madhesi's blockade (Pant 2018, 18-27). Despite using both smart and soft power, India conventionally applied these powers. The conventional application of these powers means it divided the global partners and allotted power suitability instead of making it a dynamic diplomacy. Like India- EU relations remained determined under the ambit of value convergence, whereas with EU Member States like France, the relations were more strategic and mutually cooperation-based (Jain & Sachdeva 2019). The multi-alignment, which goes beyond the non-alignment, is destined to succeed when it has dynamism instead of making a strict authoritative allocation of type of power (Chandra 2017, 98-117). In the case of India, it would be difficult to determine the beginning of the smart power

approach application; however, there are various instances where the existence of the same is applicable. India's diplomacy, which claims to be based upon strategic autonomy exemplified in its changing stances on the Israel-Palestine issue, Iran and the US following de-hyphenated foreign policy, is the application of smart power (Khalid 2019, 127-142). In the India-EU relationship, it is interesting to highlight various aspects where both players attempted to upgrade their relationship based upon myriad convergences in interests and values induced by the changing world order.

The EU, a supranational association aimed to prevent world war-type catastrophe with mutual development of the members, made it a politically normative association. This institution's normative and values base became the element of its soft power (Manners 2008). The heavy reliance on value-based diplomacy with the reluctance of security or hard power vision made it under the security umbrella of either NATO or the military giant of the Union (Telo and Ponjaert 2016). The one voice of the EU, which was the principle of the Union, got diluted either because of the power politics of the giant members or their premise of treating foreign policy as their preserve. This outcome came with the descending clout of EU power as the security and defense remained orphans for the EU. The humiliating weakness of the EU was seen during the genocide in Bosnia, which it failed to prevent. Many experts think the absence of the EU's smart power is the ignorance of the hard elements of power or the failure to devise a strategic foreign policy. Giles Merritt argues for "putting some muscles into Europe's soft power" (Merritt 2016, 175-201). He gave various examples when the hopes of EU's security power got revived with the Franco-British Declaration (1998), the publication of the European Security Strategy (ESS) in December 2003, and successful operations like "Operation Artemis" to the Democratic Republic of Congo (DRC) but with several failures like the Libyan crisis wherein the unanimity between the EU members were absent (Merritt 2016, 175-201). The economic crisis of 2008 and the strong public outrage against the defense budget again made the inclusiveness of varied power in foreign policy sidelined.

EU's soft power was slammed by experts like Anders Fogh Rasmussen (2013), who was NATO Secretary General and former Danish Prime Minister, who emphasized that: "Europeans must understand that soft power alone is really no power at all. Without hard capabilities to back up its diplomacy, Europe will lack credibility and influence. It will risk being a global spectator, rather than the powerful global actor that it can be - and should be".

The crisis in Ukraine and the declining NATO influence since Trump's reiteration of budget sharing necessitates the EU to reinvigorate its foreign policy, not to a hardcore military strategy but to make it smarter with wielding power. Thus, the excessive reliance upon the value-based power of the EU seems ineligible for the smart power criterion.

The European External Action Service (EEAS) launch by the EU on 1 December 2010 demonstrated their focus on smart power. Despite a silent start, the initiative was an innovation in the history of the supranational union, which envisages giving a single diplomatic voice to the EU, aiming at coordinating, shaping, and enacting the entire body of EU foreign policy under a single command. EEAS embodied the unifying value of the EU with the process of cultivating a distinctive institutional identity (Cross 2011). Mai'a K. Davis Cross argues that the invention of EEAS, compared with the Lisbon Treaty (13 December 2007) and its various offshoots, demonstrates the commitment to smart power. The EEAS aimed at coordinating the foreign

policies of Member States and the EU more closely, giving one voice to the EU's foreign policies. The use of hard power by the Member States by increasing defense spending and soft power used by the EU, i.e., its normative leverage, are hoped to be coordinated under the plan of EEAS. The 27 Member States have much at their disposal with over half a billion people, the largest economy, and a contributor to global research, aids, development, etc., making it a stronger global actor (Cross 2011). In a nutshell, EEAS would give the EU a stronger and more coordinated foreign policy, lumping hard and soft power and making the EU a smart power actor.

### SMART POWER FACTOR: INDIA-EU ENGAGEMENTS

The 15<sup>th</sup> India-EU Summit (15 July 2020) marked an epochal moment in their relationship by endorsing "India-EU Strategic Partnership: A Roadmap to 2025". The roadmap mentions more than 100 points with six major identified areas of cooperation. From the traditional value convergences and political connections to the rising economic and security imperatives, the roadmap is an ambitious document that illustrates the emerging reset of their relationship. The area of foreign policy and security cooperation dealt with the need for an expanded dialogue mechanism. Security agreed upon cooperation against rising threats like terrorism and its allied activities. Both partners acknowledged the need for intelligence cooperation and aimed to conclude and implement a working arrangement between Europol and the Central Bureau of Investigation (MEA 2020). The document envisions a comprehensive vision to strengthen India-EU relations based upon the strategic aims and concern for the dilution of rule-based order. The India-EU leaders meeting of 2021 held online with the PM of India and 27 EU Member States not only pushed the stalled FTA but also made a serious attempt to maneuver the opportunities.

Similarly, the EU president's address in the Raisina Dialogue attempted to use the value convergence of India and the EU to make their relationship more strategic by highlighting the existing threats and competition. The President highlighted the need to rethink possible asymmetry in interdependence, which is leveraging strategic gains. The shifting power balance towards the Indo-Pacific was also mentioned, focusing on China's actions and calling it an economic competitor and a systemic rival. However, despite sharing common views on various contemporary issues, the EU's views on India's response to Ukraine's crisis were seen as appeasements to Russia. The EU's special envoy on the Indo-Pacific, Gabriele Visentin, expressed displeasure over India's abstention in the UNSC resolution against Russia and said that the EU was not pleased with India's vote but believed both have been sharing common values.

Notwithstanding the disruption caused by the Ukraine crisis, both sides maintained a more determined political will without disturbing the tempo of moving towards rapid formalization of their relationship. New Delhi and Brussels have remained determined over their position on the Ukraine crisis, with several strong arguments by India against their alleged bankrolling of the crisis by cheaper Russian oil imports and its hypocritical response for violation of rule-based order. External Affairs Minister S Jaishankar responded that Europe advises making more trade whenever such a conflict occurs in Asia. During the Galwan confrontation, the EU signed a Comprehensive Agreement on Investment with China. He added that the crisis in Ukraine could be a wake-up call for Europe to look at Asia (Talukdar 2022). This exchange of

views did not sever the ongoing strengthening of the relationship, which is unusual in their traditional relationship where the diktat over human rights by the EU used to ebb in their partnership. PM of India's visit to three EU Member States when the region is engulfed in a war crisis with divergent responses illustrates the well-calibrated diplomatic stances of both companions. Starting his visit from Berlin, where the intergovernmental consultations (IGC) were held, security, economic and financial policy, scientific and social exchanges, and climate and sustainable development were major areas of partnership. After Berlin, the visit to Copenhagen hosted the Second India-Nordic Summit with points of deliberation, including post-pandemic economic recovery, the climate crisis, innovation and technology, renewable energy, the evolving global security scenario, and cooperation in the Arctic region (Laskar 2022). In the last leg of the visit to Paris, India's significant EU strategic partner considered taking their strategic relations to the next level as both partners share similar visions and values. These developments show the varied nature of collaboration between India and European members, unlike the previous engagements with only the major European nations - numerous instances of their collaboration point towards an inclusivist approach in their diplomatic relations to secure national interests. However, securing national interests is not always spearheaded by strategic calculations; the elements of public diplomacy, like health diplomacy, promote goodwill, which in turn catalyzes national interests. This makes diplomacy derived from smart power. Similar parallels can be drawn in health diplomacy efforts in the EU-India case.

### INDIA-EU HEALTH DIPLOMACY

Public health promotion and protection through multilevel and multi-actor negotiations are at the heart of health diplomacy, a subfield of Global Health Diplomacy (Kickbusch 2021). Health diplomacy describes incorporating health policy and negotiation into broader international relations. Health-related issues, such as patent waivers, pooling, sharing of technical health know-how, etc., are central to ongoing diplomatic negotiations. The pandemic, however, served as a "black swan" event in health diplomacy, reviving this field of study that had been passed down until now. The health diplomacy efforts between India and the EU have manifested themselves in many agreements, plans, and negotiations in which both state and non-state actors have taken part. Rupa Chanda connected the dots between the General Agreement on Trade in Services (GATS) between India and the European Union, from international consumption to the free flow of services across borders (Chanda 2011, 1-13). The India-EU proposed free trade agreement or the stalled Bilateral Trade and Investment Treaty (BTIA) contains various health cooperation and their commitment towards intellectual property rights, where the major area of divergence exists. Several partnerships aimed at preventing disease and promoting wellness are also included in the 2025 strategic roadmap.

The EU-India Joint Working Group on Pharmaceuticals, Biotechnology, and Medical Devices facilitates regulatory dialogue with India and allows the formation of specialized sub-groups, one of which focuses on pharmaceuticals per the India-EU Cooperation Agreement on Partnership and Development from 1994 (European Commission 1994). In 2005, a Joint Action Plan for the India-EU Strategic Partnership was adopted, and within it, a working group on pharmaceuticals was supported. Their work began in 2006, and they have consistently met each

year. Through capacity-building and regulatory contacts, the European Medicines Agency (EMA) aids India in adopting international best practices in pharmaceutical GMP and clinical trial activities (EMA 2006). As part of this capacity-building partnership, Indian regulatory authorities will be represented at conferences and training events, and Indian invitees will be allowed to participate in inspector training. Ayurvedic medicine is being considered for European use by the European Medicines Agency (EMA Committee) for Herbal Medicinal Products. The In Silico Trial for Tuberculosis Vaccine Development (STriTuVaD) project aims to create and clinically validate an in-silico trials technology that can predict the effectiveness of therapies for active tuberculosis based on novel therapeutic vaccines (STriTuVaD 2019). The project is supported by the Department of Biotechnology of the Government of India and the EU's Horizon 2020 Research and Innovation Programme through the exchange of experts. Peter M. Haas characterizes epistemic communities like STriTuVaD as a network for the promotion of collective amelioration. This collaboration is the best example of what epistemic communities can look like in practice. A "network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue area", as defined by Peter M. Haas (1992), is an example of an epistemic community (p. 23). Information and communication technology's long-term plan is focused on advancing cutting-edge fields like artificial intelligence and blockchain to improve healthcare delivery. Antimicrobial Resistance (AMR) is among many emerging health concerns that call for international collaboration. In the long run, the sustainable food system is envisioned as a healthcare promotion effort. The pandemic threat has prompted new medical research and development cooperation forms to better prepare for and respond to pandemic crises.

As a result of their differing perspectives on intellectual property rights, India and the EU's health diplomacy, which aims for a "health for all approach" and takes into account the pharma bases of India and the scientific leverages of the EU, is often watered down. Because of this discrepancy, the Bilateral Trade and Investment Treaty (BTIA), also known as the Free Trade Agreement (FTA) between India and the European Union, was put on hold. The BTIA, a broad picture of relations between India and the European Union, is unbalanced because it ignores trade, strategic imperatives, and humanitarian obligations. Prior to 2005, no patents were issued for Indian medicines, leading to the proliferation of generic medicines that have been instrumental in the treatment of many life-threatening illnesses, including HIV/AIDS, tuberculosis, and others. However, because of its dedication to the WTO's Trade Related Intellectual Property Rights (TRIPS), India has weakened its pharmacy infrastructure, making it more difficult for the poor to access the care they need.

Furthermore, there are examples of productive health partnerships between the two countries, such as the case of Thailand, which supplies roughly 45% of India's antiretroviral drugs. As more people look to India for its low-cost, high-quality medical services, various EU regulations have begun to restrict such travel out of concern for patient safety. One such measure was taken by the UK, a former member of the EU, which limits patient travel to countries more than three hours away. After the public outcry and initiation the WTO complaint, it was deemed inappropriate to seize lawful generic medicines manufactured in India and destined for markets outside Europe (Mehdudia 2010). The European Union proposed changing Measure 1383/2003 of the Border Regulations to intercept goods suspected of violating certain



intellectual property rights (EUR-Lex 2003). These rules are being contested because they are unconstitutional in several respects, including their inappropriate application of the law of the transit country, the lack of a meaningful opportunity for parties and consumers to be heard, and the absence of adequate remedies for the harm caused by the rules (Baker 2012). This seizure also ran counter to several central principles of the Doha Declaration. Since both India and the EU focus on improving their domestic business climate and research returns, the more ambitious India-EU FTA, which includes trade liberalization and patent obligations, is unlikely to come to fruition. They are very dedicated to protecting patent rights, but this could hurt India's pharmacy industry, which has both commercial and social responsibilities.

Both regions can attest to their "health for all approach" and their FTA patent compromises during the pandemic, which was a significant event. The two sides, however, have been unable to resolve the conflict amicably despite the terrible mortality caused by the pandemic and the lack of vaccines due to strict patent regulations. The COVAX vaccine pool ensured that vaccines were distributed fairly and without discrimination. The EU's continued call for compromise without agreeing to a full waiver, in response to India's stronger accusations that the EU was preventing equal access to vaccines, prevented any unanimity. Furthermore, to calm the commotion caused by the vaccine waiver's refusal, a partial waiver that only covers vaccines was recently accepted. It was a crucial time for New Delhi and Brussels to resolve the issue of patent compromises and support their universal health goal. The relationship between India and the EU on health diplomacy has more promises than results. Both partners demonstrate diplomatic ingenuity despite disagreements regarding patent regulations, the FTA's stalling, and the current attitude toward the Ukraine crisis.

Both domestic and international imperatives are present in the two partners' engagements in health diplomacy. In the cases of India and the EU, health diplomacy is not only positioned as a component of public diplomacy but also has a number of humanitarian responsibilities. The proposed BTIA, if adopted, would fulfill these requirements. However, it also contains provisions that could endanger India's industry for low-cost generic medications while enhancing trade relations and increasing scientific research. After the TRIPS agreement, the manufacturing of generic medicines grew less rapidly due to the strict patent obligations.

The National List of Essential Medicines (NLEM), created by the Indian Ministry of Health and Family Welfare, partially addressed the issue of the domestic population's access to affordable medications. The Essential Medicines List (EML) is a model list based on priority, affordability issues, etc. Another tool to lower the cost of medications is compulsory licensing, which is governed by the Indian Patent Act of 1970 and is recognized internationally by the TRIPS agreement and Doha Declaration. In addition to domestic healthcare access, healthcare equity globally is still precarious. The pandemic was the best example of how a lack of agreement regarding the vaccine IPR endangered Article 3 of the Universal Declaration of Human Rights (UDHR). As a result, the two partners' health diplomacy has a variety of global and bilateral spillovers in addition to serving as a tool for projecting their soft power. Their partnership would become more legitimate if conducive health diplomacy could be achieved, which would only be possible if both parties increased the use of smart power while giving up a variety of provisional interests for a lasting and solid partnership.



## CONCLUSION

Since their interests are so closely aligned, the contours of India-EU relations have shifted from limited democratic and normative commitments to more commercial and strategic ones. Due to rising threats from overly dependent nations creating asymmetric dependence, leading to strategic leverage, their relationship is a manifestation of smart power, in which both partners project their soft power of norms and values with their hard power of strategic balance. The precarious state of their relationship can be seen in the many times when they have severed ties in protest of EU normative diktats. Because of the uneven development of EU cooperation in other areas, the Union's normative strengths were frequently cited as a reason for disagreement. Due to shifting global politics and convergent interests, diplomacy has expanded beyond the narrow traditional areas of cooperation. Because of increased cooperation in many fields with several EU member nations, the European External Action Service was able to project smart power.

Contrary to the limited norms and trade, the India-EU strategic roadmap 2025 includes various areas for cooperation. The diplomatic smarts of both players are on display in the ever-expanding scope of their partnership. With the passage of its provisions in pieces, the free trade agreement, i.e., the Bilateral Trade and Investment Treaty (BTIA), aimed at liberalizing trade relations, is still pending, preventing any conflicting provision from severing their relations. Since neither side is ready for such radical reforms, it will be difficult to maintain the "peace by pieces" in FTA rather than agree in a knee-jerk instance. Both sides had a chance to air their grievances over patent waiver and the ensuing furor over allegations that the EU had anti-global South policies; India had voiced strong opposition to the EU's position on securing a patent for the Covid-19 vaccine. These responses demonstrated that their fundamental chasm had reemerged during the pandemic. The EU viewed India's response to the Ukraine-Russia crisis as reckless, with both sides accusing the other of funding the unrest. Despite these obstacles, the European Commission's President's Address at the Raisina Dialogue highlighted the commitment to long-term stabilizing their relations, which helped to make their relationship smarter.

Despite their fundamental disagreements, the two have completed several health-related programs, initiatives, and plans. When two countries with such a strong pharma base as India and a scientific high ground as the EU work together on health issues, it garners a soft power diplomatic interest and widespread respect worldwide. Despite greater promises settled by lesser deliverables and many disagreements, diplomatic negotiations and development kept their relationship strong during the pandemic because they recognized the importance of working together to combat it. During the pandemic, it became clear that India and the European Union's commitment to health diplomacy extends beyond international borders. India and the EU's health diplomacy is an example of diplomatic dexterity. It has led to widespread international praise for the two countries and ensured their differences have not derailed their ability to work together in other areas. The trend of eschewing international commitment and favoring strategic priorities does not work between India and the EU. Their relationship will grow stronger as they continue to uphold this commitment, and the opposite is also true since their relationship is aligned with global values. As a result, they require hybrid or smart power to maintain the normative relationships between them that have existed for a long time.

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# ELECTORAL BONDS: A PERIL TO DEMOCRACY AND TRANSPARENT ELECTIONS IN INDIA

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**Abstract:** A democracy is built on free and fair elections. India is one of the world's most populous democratic countries. In 2018, the Indian government launched a new electoral bonds scheme to fund elections. Electoral bonds influence election funding and make it easier for corporate entities to conceal political donations by concealing the bond's buyer and beneficiary details. The new electoral bonds scheme lures companies and facilitates money laundering. The present article critically evaluates the electoral bonds scheme by analyzing the various acts and statutes. However, the Indian judiciary evaded its role as guardian of the constitution and final interpreter of the constitution by not deciding the cases pending in court. The scheme provides an unfair advantage to the ruling party. Anonymity and secrecy harm accountability in a democracy. The new election funding scheme undermines transparency and fair elections. This new election funding scheme has exacerbated the situation in Indian democracy. This new mechanism of election funding keeps voters in the dark about whether the governing party favors corporate donations.

**Keywords:** Electoral Bonds; Free and Fair Elections; Democracy; Transparency

## INTRODUCTION

The issue of funding for elections is complicated in all democracies. Donations made fraudulently to gain leverage or policy favors have stained all democracies and left them with a tarnished image. Donations to political campaigns, especially those made by big corporations, significantly contribute to graft and corruption. As a direct consequence, a growing emphasis is placed on the principles of transparency and accountability. The government of India has announced the scheme of electoral bonds to clean up how money is spent on elections in the country (Union Budget 2017-18, 32). The electoral bond is an instrument used by political parties to raise funds. How do these electoral bonds work? For example, an individual, a corporate entity, or a family who wants to donate money to a political party can donate it through electoral bonds. They can approach designated branches of the State Bank of India and purchase these electoral bonds. They can purchase in different denominations of ₹1000 or ₹10,000 or ₹1,00,000 or ₹10,00,000 or ₹1,00,00,000. There is no restriction or ceiling on the number of times and the value of the amount one can purchase these bonds. That means an individual, corporate entity, or undivided Hindu family can approach any designated State Bank of India branches to purchase electoral bonds any number of times and at any value. However, these bonds cannot be purchased through cash because cash usually is associated with unaccounted black money and illicit money. An electoral bond would be a bearer instrument

like a promissory note and an interest-free banking instrument. These bonds will be available for purchase by Indian citizens or a body incorporated in India.

The purchaser would be permitted to obtain electoral bonds only when all existing KYC (know your customer) norms were fulfilled. The payment for the purchase must be made solely from a bank account without specifying who will receive the payment. The validity of electoral bonds is limited to 15 days. They may only be used to donate to political parties registered under Section 29A of the Representation of the Peoples Act, 1951 (43 of 1951). These bonds could be given to a political party that received a minimum of 1% of the votes cast in the recent general election for the Lok Sabha (Lower House of Indian Parliament) or a Legislative Assembly (Legislatures of Federal Units). An eligible political party shall encash the bonds only through a designated bank account with the authorized bank (Government of India, Press Release 2018, 1).

One can purchase these electoral bonds and give them to a political party or treasurer of a political party. An individual may purchase electoral bonds alone or in collaboration with others. The treasurer of a political party can encash this bond at a designated bank account that is maintained under the supervision of the Reserve Bank of India. The political party has to encash these bonds within 15 days, failing which these funds get deposited in the Prime Minister Relief Fund (PMRF). This is how the electoral bonds scheme was designed for political financing in India.

The Association for Democratic Reforms (ADR), a non-governmental organization (NGO), is doing outstanding work in India to improve governance and strengthen democracy through extensive research on electoral and political reforms. ADR examined the number and amount of electoral bonds acquired and redeemed by political parties in each of the twenty-three stages from March 2018 to November 2022. ADR gathered the data from annual audit reports submitted to the Election Commission of India by major political parties. ADR (2023) data states:

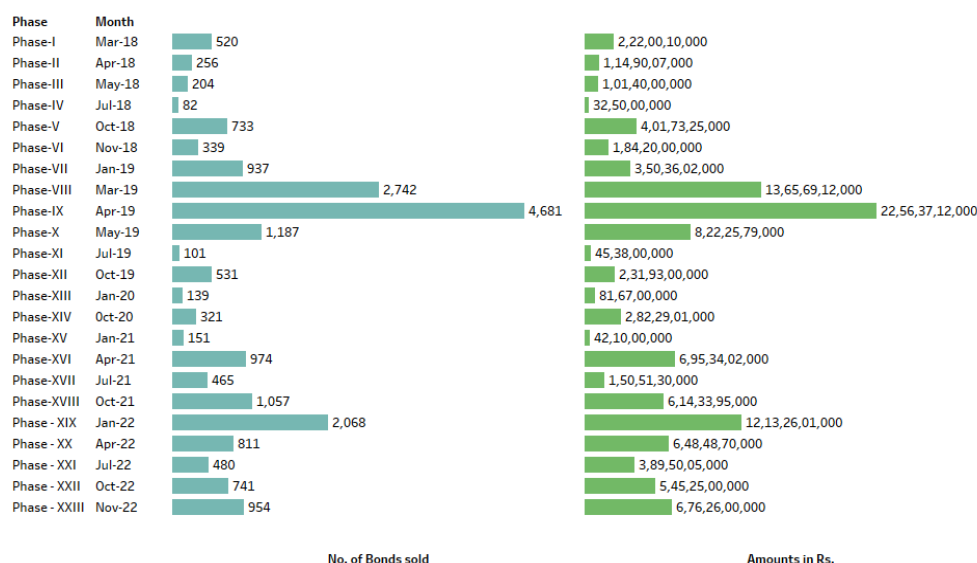
20,474 electoral bonds worth Rs 11,467.7351 cr were sold in twenty-three phases between March 2018 and November 2022. Twenty-thousand three hundred fourteen bonds worth Rs 11,444.0509 cr were redeemed during this period. 31.585% of the total value of electoral bonds were purchased in two months alone, March and April 2019, the period of general elections (pp. 6-7).

In 2017 the then finance minister Mr. Arun Jaitley, while introducing the scheme, said, "we need to reform the funding mechanisms to political parties. That reform is to do away with cash donations. Let us have accounted and legal money for funding political parties in India" (Union Budget 2017-18, 33). Hence, it was stipulated that electoral bonds could be bought through cheques, demand drafts, NEFT, RTGS, etc., but not through liquid cash. At the time of its introduction, the electoral bond scheme was seen as a limited reform and the first step to eliminating black money from election funding (Union Budget 2017-18, 32). However, why would political parties need money? Why would a political party need billions of rupees to contest elections? Political parties' primary motive for fighting elections is to win and form a government through democratic, legitimate means of elections. They require money to campaign for votes and to propagate their ideology. It has to pay salaries to its office bearers, members, their transportation, boarding lodging, etc. In order to ensure that the expenditure of

political parties through legitimate money and not unaccounted or 'black' money, electoral bonds have been introduced. The funds in liquid cash are generally associated with unaccounted money.

Electoral bonds are thus the new instrument through which political parties raise funds to campaign in the elections and propagate their ideology and programs. This also means that in the absence of donations, political parties cannot fund their election campaigns.

**Phase-wise EBs sold from March 2018-November 2022**



**Graph 1: Phase-wise Electoral Bonds Sold (Source: Association for Democratic Reforms 2023)**

As a result, only the already wealthy or well-endowed parties would be able to contest elections successfully. Because they have the money, they can successfully run a campaign and generate money through electoral bonds. This allows them to fund the election campaign of SC, ST, and candidates from the weaker sections of society. The logic of electoral bonds appears to provide a level playing field for all sections of society to contest the elections.

## THE ISSUES AND CONCERNS FOR DEMOCRACY IN INDIA

A free and fair election is impossible without guaranteeing certain democratic rights, such as freedom of expression, association, and assembly. Elections have the potential to be an effective tool for generating political possibilities and engaging a larger number of individuals in the political process. The electoral process allows political parties and civil society to mobilize, organize their supporters, and engage with the public about various issues. Elections also encourage individuals to discuss public policy and other significant concerns.

Funding for political campaigns is the basis of all political corruption. It started in India with the very first general elections. Corporations have funded political parties in India since the country's independence movement. The Birlas were major contributors to the Congress party. Following independence, the corporate sector greatly influenced the Congress government's

economic agenda. It contributed significant funding to post-independence election expenditures. Prime Minister Indira Gandhi outlawed corporate payments to political parties in 1968 by deleting Section 293A of the Companies Act. The restriction was enacted to prevent giant corporate groupings from wielding excessive influence over politics. However, there has been conjecture that she may have partly proposed this legislation to prevent corporate interests from funding right-wing opposition groups. The free market-oriented Swatantra Party acquired considerable prominence in the late 1960s. The prohibition on corporate contributions to political parties was not followed by public financing to replace corporate money. As there was no alternative appropriate and legal source of finances, politicians' dependence on black money for election campaigns expanded considerably (Gowda 2012, 227).

Corporate funding for political parties has significantly increased in recent years. The introduction of electoral bonds has made it even more convenient for corporations to fund political parties. The Election Commission of India's (ECI) provisional election expenditure:

estimates over the past six decades skyrocketing almost 274 times from ₹0.26 million to ₹71.38 million per constituency between 1952 and 2014" (Economic and Political Weekly 2019). Electoral bonds were introduced in the 2017 Union budget and permitted corporates in India or overseas to donate secretly to political parties. Electoral bonds "have surely emerged as a vital instrument (...) by opening the floodgates of indefinite and mysterious donations and legitimizing the illicit money (...) more than Rs 9800 cr (Association for Democratic Reforms 2023, 2).

Political parties shape policy and legislation. Public policy and political funding are interwoven. The objective of the state is to ensure the well-being of its citizens. The government helps the state accomplish its objectives. The state formulates, expresses, and accomplishes its goals via public policy, which it executes through government organs. Political parties form the government and have control over the legislative process. Political parties interact and bargain with the electorate, producing a particular policy outcome. A policy process is not something natural or spontaneous. On the contrary, policy processes are social processes. The outcome cannot be determined in advance but relies on the interactions and strengths of the pressure group members, lobby groups, and other civil society groups.

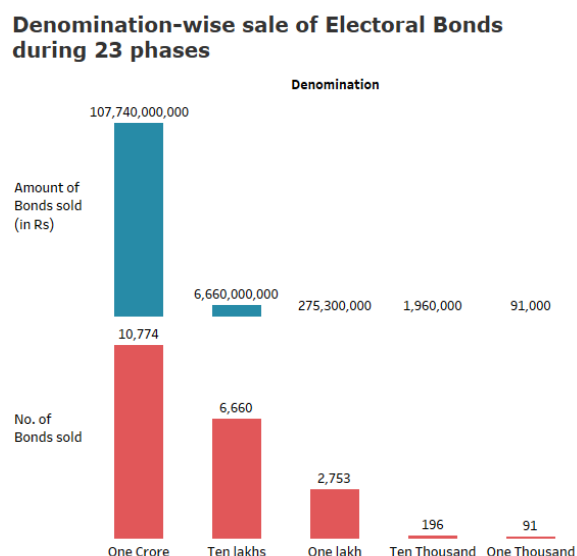
### **ANONYMITY VERSUS TRANSPARENCY**

The electoral bond scheme has an entirely anonymous process, anonymity, in that these bonds are bearer bonds in promissory notes. It means that when an individual or corporate entity approaches the State Bank of India and purchases these electoral bonds, nobody knows which political party they will donate it. That means this entire process is anonymous and confidential, hence, lacks transparency. The crux of the debate is whether anonymous, concealed political funding benefits or undermines democracy.

Nevertheless, it is also the most crucial advantage of electoral bonds. When someone wants to donate money to a political party of their choice, that party is not in a position to form the government after the elections. The adverse result is that if it is known that the people who

donated to the opposition political party, the ruling party will be indifferent to them. It may use state machinery such as the Enforcement Directories (ED), Central Bureau of Investigation (CBI), National Investigation Agency (NIA), and other agencies at its disposal to harass and trouble the donors to opposition parties by implicating false cases. To avoid such victimization, the scheme needs anonymity and secrecy. A corporate contributor might purchase bonds and give them to a chosen party. The donor does not have to say who received the bonds; the recipients need not disclose where they obtained them. The argument supporting secrecy is that we must conceal the donor's identity because the donor's secrecy is the scheme's core objective to prevent this individual from political victimization.

The fact that only the ruling party is aware of who purchases and supplies electoral bonds threatens the functioning of democratic processes. Before the introduction of electoral bonds, political parties were bound to disclose any donations above Rs 20,000, and corporations could not give more than 10% of their revenue. The introduction of electoral bonds encouraged anonymous and shell company donations to political parties. Another concerning aspect of working the electoral bond scheme is that "93.95% or Rs 10,774 cr of the total value of bonds purchased were in the denomination of Rs 1 crore, indicating that these bonds are being purchased by corporates rather than individuals" (Association for Democratic Reforms 2023, 8). The entire electoral bond scheme is biased in favor of the ruling party. "Between FY 2017-18 & 2018-19, political parties received Rs 2,760.20 cr from electoral bonds. A whopping 60.17% or Rs 1,660.89 cr of this was received by a single party which is the ruling political party" (Association for Democratic Reforms 2023, 9). The donations are anonymous, whether it is anonymous to the ruling political party? Suppose a corporate house purchased electoral bonds worth 100 crore rupees. State Bank of India should not disclose the purchaser's identity. However, the State Bank of India is a public-sector bank under the control of the government. The government thus has access to the details of who purchased bonds, the value of bonds, and which party has encashed those bonds.



**Graph 2: Denomination-wise Sale of Electoral Bonds (Source: Association for Democratic Reforms 2023)**

## CRITICAL APPRAISAL

Before 2017, the identity of every contributor who gives more than ₹20,000 to a political party had to be made public. That means the political party has to disclose the identity of the donors who donated more than ₹20,000. However, donations of less than ₹20,000 need not be disclosed. The rationale is that a political party organizes a rally or meeting, asking the people to contribute. It becomes very difficult for a party to account for every single rupee as donations can be in small denominations of ₹50, ₹100, ₹200, ₹300, or ₹500, etc. All those small donations become very cumbersome. That is why the law says donations less than ₹20,000 do not need to disclose the donor's identity due to cash donations to political parties. This cannot happen now because the electoral bond scheme eliminates cash contributions as liquid cash is unaccounted for, black or illicit. As one purchases these bonds through cheque, demand drafts are accounted for, and legitimate money is not liquid cash. It is not illicit black money. A political party cannot accept a cash donation of more than ₹2000, and nobody can donate more than ₹2000 to a political party. However, it allowed political parties to benefit by increasing the number of bogus donations. Though the rule change would be time-consuming and inconvenient for political parties, it would allow them to increase the number of bogus donations.

Another pertinent point to mention here is that political donations are tax-free. However, the printing costs of electoral bonds and the bank's commission for selling them are paid with taxpayer money. Corporate entities donate money to a particular political party to get a tax exemption.

The Union budget of 2017-18 contained a chapter on electoral bonds. This chapter was named transparency in electoral funding (Union Budget 2017-18, 32). How can transparency and anonymity go hand in hand? These are contradictory to each other. Another problem with these electoral bonds is anonymity. Before the introduction of electoral bonds, if a corporate entity wanted to donate funds to a political party, it could donate only 7.5% of its net profit over the past three years. Section 182 of the Companies Act 2013 says that a company must include information about contributions in its financial statement. However, the Finance Bill of 2017 said that companies do not need to follow the rules if they donate money through electoral bonds. Now any corporation, even shell companies, may donate any amount, even 100% of its profits, to political parties. Whenever a corporate entity donates to a political party, the corporate entity has to mention in the annual return that we have donated this much money to particular political parties. The ceiling on corporate donations was abolished, enabling companies to pay 100% of their profit.

Nevertheless, why would a company pay 100% of its profit to a particular political party without a *quid pro quo* agreement between corporations and political parties. There is a reciprocal exchange of services through favorable policies, tax cuts, allotment of lands at prime locations, etc. Because donations are anonymous, they might be used as a convenient channel for the transfer of black money. In addition, the scheme may make it simpler for corporations to donate the money they illegally obtained to political parties in exchange for something. Namely, successive governments have taken steps to protect corporate donors. The UPA created electoral trusts to conceal corporate funds' intended recipients. Registered as not-for-profit companies under Section 25 of the



Companies Act, these trusts may take donations from companies and channel them to political parties without linking individual contributions to disbursements (Jaswal 2019, 33).

Another change made through Section 137 of the Finance Act, Section 29C of the Representation of People Act, 1951, also underwent arbitrary modification. Before the amendment, the party treasurer was required to notify people or corporations that donated more than Rs 20,000 in a financial year to the Election Commission of India. This rule ensured the openness of donations and made the public aware of billionaires and corporate links to political parties, especially the ruling party. The amendment removes this requirement from electoral bonds. This raises the likelihood of the ruling party acting as a tool for anonymous donors (Jain 2021, 420). Earlier, rich people, corporates, mining barons, and criminals could bring cash in suitcases and contribute it to political parties. At present, they purchase electoral bonds using accounted money. Lok Sabha 2019 elections also witnessed the highest ever anonymous funding through electoral bonds. Between FY 2017-18 and 2018-19, political parties received a total of Rs 2,760.20 cr from electoral bonds" (Association for Democratic Reforms 2023, 6).

As per the Foreign Contribution Regulation Act 2010 (FCR Act 2010), political parties cannot take funds from a foreign entity. Hence, changes have been made to bypass these regulations. The subsidiaries of foreign companies in India are not treated as foreign companies, which means these subsidiaries can fund political parties. With this amendment, a foreign company operating through its subsidiary in India would fund political parties. Money power plays very significantly, and if the entire electoral process is used in such a manner, the ruling party attracts all the money. It will be in a position to violate the level playing field. Whatever the reason, a significant disparity in campaign funding between the ruling and opposition parties is not a good sign for the health of democracy. While income or donations may not guarantee election victory, political parties with many campaign funds have a big advantage over those with fewer funds. The electoral bond scheme is biased towards the ruling party in the center. The amendment in the Foreign Contribution (Regulation) Act (FCRA), 2010:

has removed the embargo on foreign funding for Indian elections, its application with retrospective effect for 42 years has enabled political parties (the Bharatiya Janata Party and the Congress in the main) to emerge clear of sub judice inquiries on 'illicit' foreign donations in all previous elections (the Delhi High Court had held both the parties guilty of such defilement in 2014) (Economic and Political Weekly 2019, 7).

Not only have business regulations been arbitrarily altered to facilitate the unrestricted flow of donations, but every effort has been made to make this new election fundraising mechanism opaque and inaccessible to the general public. An investigation by The Quint, a web-based news portal, revealed that electoral bonds had hidden alphanumeric codes printed on them. The links between donors and political parties can be traced through these codes. The government can access these details through the alphanumeric numbers on electoral bonds. The "electoral bond issued on 5 April carries the hidden and unique number OT 015101, while the one issued on 9 April has the unique number OT 015102" (Agarwal 2018). The lab report

says the hidden serial number was “visible on the right top corner of the original document showing fluorescence when examined under Ultra Violet (UV) Light” (Agarwal 2018). However, the State Bank of India denied the contention:

The number is a security feature (...) The process of issuance and payment has been designed in such a manner that the bank will not have any record of the above number either for the donor or political party. Only the count of denomination-wise bonds issued and paid is captured in the records. There is no way to connect which donor has donated to which party (Agarwal 2018).

It can be any political party that senses the scheme is payable in favor of the ruling party. The ruling Bharatiya Janata Party (BJP) receives a major chunk of funds through electoral bonds. BJP “received over 86% of the contributions to the political parties declared so far by the electoral trusts in 2017-18” (Agarwal 2018). This disturbs free and fair elections. As it disturbs the level playing field, it can be a ground on which the electoral bond scheme can be declared unconstitutional. Another constitutional issue that emerges is the definition of a Money Bill under Article 110 of the Indian Constitution. Money bills concern financial issues such as taxes and public expenditures etc. However, electoral bonds do not meet the criteria of a money bill. Introducing electoral bonds via a money bill to fund political parties is improper and unlawful. The entire episode is unconstitutional and null and void.

## FROM JUDICIAL ACTIVISM TO JUDICIAL EVASION

Association for Democratic Reforms (ADR), Common Cause (an NGO), and Communist Party of India (Marxist) filed petitions in the Supreme Court, challenging the constitutional validity of electoral bonds. The dispute is that it is a bearer Banking instrument to fund eligible political parties anonymously, nontransparent, and gives an advantage to the ruling party. Electoral bonds violate the right to know. Transparency and accountability are hampered when a restriction on disclosure is arbitrary and unwarranted. As we saw, the entire process is anonymous and lacks transparency. Association for Democratic Reforms asked for a stay on the sale of electoral bonds before the assembly elections. The Supreme Court reserved its order but expressed few concerns. Supreme Court questioned the Government of India on how the government would ensure that the funds raised by political parties through the electoral bonds will not be misused. The funds may be used for sponsoring protests and agitations or terrorism. The Supreme Court did not halt the sale of electoral bonds and said, let us go ahead with selling electoral bonds. The matter is pending before the court, postponing the hearing.

Free and fair elections are the basic feature of Indian democracy and the basic structure of the Indian Constitution. Electoral bonds, whether constitutional or not, the petitions are pending for four years and have no verdict on this case. It has not listed and heard the crucial constitutional cases, such as the petitions challenging Article 370 abrogation, the Citizenship Amendment Act 2019, the Unlawful Activities (Prevention) Amendment Act 2019, and the electoral bond scheme, for years favoring the ruling party at the center. Keeping the cases pending for long years is the new judicial tradition of the present regime. It has created a

situation that favors the ruling party at the center. During the framing of the Indian Constitution, the Constituent Assembly members felt that all issues impacting fundamental rights be resolved within one month. It was thought that the longer the procedures dragged on in court, the more the government would gain from maintaining the *status quo*. The most recent instances have validated these fears. The court is responsible for ensuring that the judgment is delivered on time. The significant pending constitutional cases mentioned above demonstrate that the court has abdicated its responsibilities as the guardian of the constitution and is permitting the government to get away with arbitrary legislation.

In the 1970s, the Supreme Court started looking at the constitution from a legal and structural point of view. In the landmark case of *Kesavananda Bharti*, the Supreme Court declared that the executive could not change the constitution's basic features or structure. The judiciary has begun to evade fulfilling its constitutional obligations, despite being the constitution's final interpreter and guardian. The court has been hearing petitions challenging electoral bonds for over four years. Since its inception, an anonymous donation system has donated thousands of crores of rupees to political parties. This transpired during the Lok Sabha election and other state legislative assembly elections. This has altered how elections are conducted and given the ruling party an unfair advantage, making free and fair elections more difficult. However, the Supreme Court does not have enough time to hear the case and deliver a judgment. Since 2015 the Supreme Court has not decided on a Public Interest Litigation urging that national political parties be declared public authorities under the Right to Information Act 2005. There has been a glaring absence of intervention by constitutional courts, either because of unwillingness to act or evasion. This new trend is hazardous to any constitutional democracy as the guardian and defender evading its primary obligation.

## CONCLUSION

As we saw, the new electoral funding scheme is plagued with problems and anomalies. While significantly reducing cash donations was a commendable move, it nevertheless permitted political parties to take advantage by increasing the number of fake donors. Although reducing cash donations is a positive step, it has opened the door for political parties to exploit loopholes and increase the number of fake donors. On the other hand, injecting lawful and accounted money into the democratic process through cheques and digital payments is a positive development. However, its flaws in terms of anonymity and concealment cannot be ignored. The introduction of electoral bonds has a tremendous effect on the process through which elections are funded. It is impossible to comprehend whether the newly implemented policy is in the country's best interests. Election bonds in India have made concealment easier. Donations of this kind can potentially corrupt political life and hamper the healthy development of democracy in the country. This new instrument has exacerbated the situation in Indian democracy. Electoral bonds hinder democracy and transparency. Even though the government promised to reform, it continued to do the same evil deeds. They provide the incumbent political party with an unfair advantage by ensuring that the identity of the bond's buyer and the recipient is kept hidden. However, the ruling party can access the information by controlling the State Bank of India. Amendments to various acts, including the Companies Act 2013, reflect the

growing trend of corporates donating to political parties in exchange for favors. It affects free and fair elections. The electoral bonds scheme 2018 is aimed to lure corporations and facilitate money laundering. The scheme's anonymity and secrecy undermine transparency and accountability. It deprives voters of their right to know whether or not the ruling party is providing preferential treatment to its corporate donors.

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# IMPROVING WOMEN'S EMPOWERMENT THROUGH DEVOLUTION IN KENYA: THE CASE OF NAIROBI AND KAKAMEGA COUNTIES

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**Abstract:** *This study aimed to investigate the progress of women's empowerment through employment opportunities in Nairobi and Kakamega Counties in Kenya between 2013 and 2017. Despite the increasing policies that aim to mainstream social equity and equality, there is still a significant gap between policy commitments and practices. The study evaluated whether the implementation of devolved governance in the two counties has improved women's empowerment. The study's framework included an in-depth review of policy documents, official records, and reports from official websites to understand women's economic empowerment status in Nairobi and Kakamega. The study analyzed qualitative and quantitative data from County Integrated Development Plans and other secondary sources. Specifically, it examined compliance with the 30% gender rule, requiring women to hold at least 30% of all elective and appointive positions. The study found that Nairobi commands the largest share of formal sector wage employment in Kenya, and women's access to employment opportunities remains slightly lower than men in both counties. Despite implementing the 30% gender rule, the study revealed the need for more comprehensive policies that promote gender equality and women's economic empowerment in both Nairobi and Kakamega.*

**Keywords:** *Gender Representation; Employment; CIDPs; Sustainable Development; Gender Rule*

## INTRODUCTION

Over the past few decades, significant efforts have been devoted to championing women's empowerment toward sustainable development in many developing countries. These empowerment efforts culminated in formulating policies aimed at mainstreaming social equity and equality, with particular emphasis on improving the conditions of women and other underprivileged societal groups. In Kenya, issues of women's empowerment, including affirmative action, are now deeply entrenched in many policy documents following the promulgation of the 2010 constitution, which introduced a two-tier system of governance. Devolved governance requires that both men and women are accorded equal rights and opportunities for self-advancement as they contribute to the country's sustainable growth.

However, recent reviews of these policy efforts indicate that. In contrast, tremendous achievements have been realized, and an emerging body of knowledge suggests a vast gap between policy commitments and practices at the county level. Therefore, this paper explores the current practice of women's empowerment in Nairobi and Kakamega Counties in Kenya to determine whether the first devolution cycle has improved women's empowerment for the

period 2013-2017 or not while using qualitative and quantitative data from the County Integrated Development Plans for 2013-2017 and 2018-2022 and other secondary data sources.

Further, this study acknowledges that women's empowerment involves various issues, including education, governance, health, media, and employment. However, this study will explore the employment spectrum of empowerment to evaluate the progress being made by counties to empower women by complying with the 30% rule on women in all appointive and elective positions enshrined in the constitution of 2010, as reported by the County Integrated Development Plans (CIDPs) and County Public Service Board (CPSB) annual reports. To adequately respond to the research objective, this paper will first review the concept of women's empowerment from the perspective of sustainable development and devolution before examining the two cases to provide the study implications.

## THE CONCEPT OF WOMEN'S EMPOWERMENT

Empowerment has emerged as a "development buzzword" defined depending on the social spheres, such as management, historical ecology, etc. For this paper, empowerment is determined from an individual's perspective. An empowered person has high self-worth and self-confidence and can analyze their social, political, and economic environment to exercise control over decisions surrounding them. From this definition, therefore, women's empowerment refers to a process that grants women control over their lives by knowing and claiming their rights and opportunities at different levels of society. There are six components of empowerment; cognitive, psychological, economic, social, and legal (Stromquist 2002; Stromquist 1995; Golla et al. 2011). These components are fulfilled differently depending on different countries' socio-cultural, political, and economic contexts.

Moreover, many arguments support women's empowerment. Gichuhi and Njuguna (2017) explain that "women's economic empowerment is the most important enabler of other empowerments" (p. 55). Golla et al. (2011) associate women's economic empowerment with achieving development outcomes in poverty reduction, health, education, and welfare. World Bank (2003) argued that since women form the most significant proportion of the population, they should be allowed greater access to resources to reduce poverty, improve productivity, and enhance economic growth. Fraser (2019) indicated that more men are employed than women. So (2019) emphasized women's empowerment related to the Sustainable Development Goal (SDG). Mahmud and Becker (2012) and Aguirre et al. (2012) argued that since women constitute the majority of the world's poor, women's empowerment represents the most viable route to claim women's rights and opportunities in society rightfully. There are many interventions for achieving women's empowerment.

Numerous organizations and protocols have been instituted globally, including world conferences in Mexico in 1995 and Copenhagen in 1980. Further, to demonstrate the need for gender equality and women's empowerment, the United Nations established the United Nations Development Fund for Women (UNIFEM) as a separate fund from United Nations Development Program. In 1985, a third conference was held in Nairobi, Kenya, before the 1995 Beijing meeting, where women's empowerment issues were further concretized. More recently, during the Rio De Janeiro conference of 2012, where sustainable development goals were formulated,

the need to promote inclusive development was reiterated. In fact, after this conference, the United Nations has since carried out many capacity-building interventions aimed at equipping women with skills for participating in government tenders.

The United Nations (UN) is working to increase the representation of women at senior levels of the Organization. The UN Secretary-General, Mr. António Guterres, has put gender equality at the center of his ambitious reform agenda and has launched the system-wide Gender Parity Strategy. Similar efforts have been replicated on the African continent, as Stacki (2002) indicated. However, these interventions' impacts generally remain scattered and less documented.

There are many ways of measuring women's empowerment. Kulkarni (2011) explains that the Human Development Index (HDI) developed by the United Nations has been widely accepted as a measure of empowerment. HDI measurement uses income, level of education attained, and life expectancy at birth as the parameters of empowerment. During the evaluation, zero (0) represents the least empowered, while 1 represents the most empowered. HDI is better than Gross Domestic Product (GDP) because GDP does not quantify the identified variables. However, the Human Development Report office (2015) advocates for the Gender-related Development Index (GDI) because apart from quantifying the identified HDI variables, GDI evaluates existing gender inequality on a scale of zero (0) to one (1), just like HDI. This paper will evaluate most of the HDI parameters in the cases to be considered.

Nevertheless, existing studies increasingly report improved and deteriorating women's empowerment scenarios. Kabeer (2012) has reported an increasing inability for women to access productive resources due to institutional and market failures that have privileged men in accessing critical information. World Bank (2010) indicates that some countries' governance laws discriminate against women. Besides, formalized discrimination and attitudes prevent women from accessing economic opportunities. According to Oya (2010), in Mozambique, Mexico, and Tanzania, women are not allowed by their husbands and father to engage in other paid economic ventures because they might contact other men. However, this paper notes that despite these few cases of women's disempowerment, there is a need to overcome these myths and involve more women in entrepreneurial activities that generate sustainable income and employment in urban and rural developing countries.

## THE CONCEPT OF DEVOLUTION

In Kenya, devolution is one of the interventions to promote women's empowerment. Devolution can be defined in various. According to Dacks (1990), decision-making power is transferred from the central government to lower-order governments. Multiple forms of devolution include deconcentration, delegation, and privatization. Bennett (1992) defined devolution as a multi-dimensional approach to governance that defines state power and manages it through many methods. Even though devolution has far-reaching implications for the governed, culture and values are the hallmarks of successful political devolution. According to Ribot (2009), devolution policies have been pursued in some developing countries for six objectives: to promote national unity; to down-size or dismantle national governments; to shed off "risks" and "burdens" by the national government in efforts to consolidate central power; to

increase local participation in democracy; to improve efficiency and equity in the delivery of services, and; to strengthen local government. According to OECD (2001), most individuals and governments favor devolution because it sometimes transcends national and regional borders by eliminating the challenges of central government bureaucracy and managerial incapacity. The empowerment framework for devolution is anchored on the ability of individuals to choose as influenced by the agency (individual's abilities to transform the agency into actions) and the opportunity structure (existing formal and informal institutional context for choice). One of the four critical attributes of devolution is women's empowerment (Kudva and Misra 2008).

The allocative efficiency theory guides the study by Motta (2004), which reckons decentralization improves resource allocation efficiency. Some protagonists of devolution argue that individuals favor decentralization because the local governments are seen to be closer to the people than central governments, thus improving welfare more than central governments (Azfar 2007; Musgrave 1959). Moreover, local governments are said to respond better to people's demands. Hence, there is a tendency among sub-national governments to compete in providing a variety of services to meet these needs.

## **DEVOLUTION AND WOMEN'S EMPOWERMENT IN KENYA**

Many programs promote women's participation in development. The Kenya National Policy on Gender and Development (KNPGD) 2010 establishes the framework within which girls, boys, women, and men can participate and benefit equally from Kenya's development processes. These efforts culminated in the formation of the Department of Gender and Social Development in December 2006, whose mandate is to promote gender equality and women's empowerment through capacity building and provide information on other entrepreneurial opportunities.

Also, the Public Service Commission (PSC), the sole government staffing institution, is mandated to ensure equality and equity in allocating opportunities for empowerment to both men and women. To promote fairness, the PSC establishes job grades implemented in the country. According to PSC regulations (2018), jobs are classified as PSG with a numeral and a letter of the alphabet. PSG 1 (highest grade) corresponds with job group V, and PSG 17 (lowest grade) corresponds with job group A. PSG 6, or job group Q to R, represents senior management and functional heads. PSG 5 represents job groups S, T, U, and V represent top management and executives. PSG 9 to 19 represents junior management implementing decisions communicated from the top.

Similarly, the social pillar under Kenya's Vision 2030 seeks to promote equitable empowerment of both men and women. However, the constitution of 2010 is absolute. It demands that 30% of women be in all elective and nominated positions in the country. Moreover, according to article 235 and section 57 of the County Governments Act (2012), all counties are expected to establish a County Public Service Board. The board must submit an annual report to the County assembly showing the progress of implementing devolution. A random check of these reports uploaded on the official county websites indicates that only two reports were prepared for 2013-2017. The existing report for most counties is the Annual Report for the years 2015 and 2017.

Interestingly, there seems to be no standardized reporting template for this progress. Among other things, the report highlights; the level of compliance in staff recruitment, staff training, and promotion, staff employed per job group, regional representation of employed staff, the ethnic composition of county staff, and gender representation, indicating the proportion of men and women holding different positions in the county hierarchies. In general, the implementation of these policy provisions has not been easy. Even though studies seem scattered at the national level, they indicate that more should be done on gender representation targeting women.

Kenya National Bureau of Statistics (KNBS) (2017) reports that even though Kenya's economy is fast growing and poverty is declining as a result of devolution, which established 47 county governments and brought services closer to the people, these economic development benefits are not equitably shared as women remain disadvantaged socially, economically and politically. According to the Report, women are underrepresented in decision making have low access to higher education, land, and employment opportunities. The report indicates that women provide over 80% of farm labor and manage 40% of smallholder farms in Kenya. However, they only own roughly 1% of agricultural land and receive 10% of the available credit.

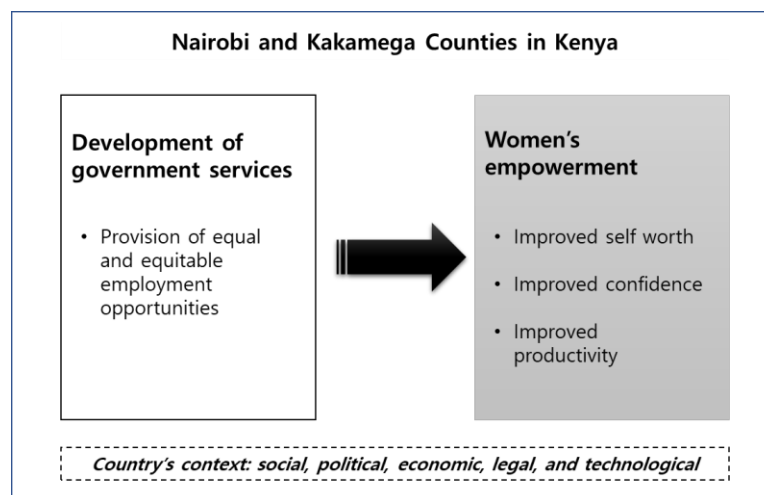
However, Gichuhi and Njuguna (2017) found that significant progress was being made in the counties to empower women economically. The study noted that introducing development programs in Nakuru County positively impacted women's empowerment but called for specific projects targeting women.

Moreover, Kyuvi (2017), while applying case study methods, established that women's empowerment had gained momentum. The study reckons that women groups were powerful tools for fostering women empowerment in Mathare Valley in Nairobi County. These women's empowerment cases seem to point to the fact that county governments are making significant strides toward women's empowerment. Still, more policies need to be formulated to support these efforts.

## METHODOLOGY

This study seeks to investigate women's economic empowerment through the distribution of employment opportunities due to devolution in Kakamega and Nairobi Counties. This study has chosen Nairobi because it is the most populous capital city and is perceived to have the highest HDI in Kenya. In contrast, Kakamega has been selected because it is the second-most populous county and represents a rural county with a perceived lower HDI. It will, therefore, be interesting to compare the application and level of compliance with the 30% gender rule and the outcomes of women's empowerment. A conceptual framework indicated in Figure 1 was constructed to adequately address this goal alongside an in-depth document content review of specific legal and policy documents and official records or reports retrieved from official websites presented in Table 1. Three research questions were asked. First, what is the current economic empowerment status in Nairobi and Kakamega Counties? Secondly, is the distribution of employment opportunities (economic empowerment) between men and women in line with the 30% gender rule outlined by the constitution of 2010? Thirdly, what are the policy implications of this study?

Obtained data were analyzed qualitatively with the hind lenses of the Human Development Index (HDI) by describing the similarities and differences in women's access to employment opportunities in the two counties. Moreover, descriptive statistics were used to summarize women's access to employment opportunities.



**Figure 1: Conceptual Framework (Source: Authors' depiction)**

Figure 1 highlights that in a given country context (social, political, economic, environmental, legal, and technological) holding other factors constant, the devolution of government services through the provision of equal opportunities for employment results in women's empowerment as reflected through improved self-confidence, and participation in decision making.

**Table 1: Key Documents Consulted (Source: Authors' depiction)**

Document	Information	Source
The Constitution of 2010	Sets the threshold for gender empowerment at 30% of either gender in elective or appointive positions	<a href="http://www.kenyalawreporting.org">www.kenyalawreporting.org</a>
The County Governments Act of 2012	Requires that annual County PSB reports be prepared to show development progress, including women's empowerment	<a href="http://www.kenyalawreporting.org">www.kenyalawreporting.org</a>
Kakamega CIDP 2013-2017	Elaborates the county plans and strategies for achieving women's empowerment in the period 2013-2018	<a href="http://www.kakamega.go.ke">www.kakamega.go.ke</a>
Kakamega CIPDD 2018-2022	Elaborates the county plans and strategies for achieving women's empowerment for the period 2018-2022	<a href="http://www.kakamega.go.ke">www.kakamega.go.ke</a>
Kakamega CPSB Report 2014/2015	Records of county achievements on women's empowerment in the financial year 2014/2015	<a href="http://www.kakamega.go.ke">www.kakamega.go.ke</a>
Kakamega CPSB Report 2016/2017	Records of county achievements on women's empowerment in the financial year 2016/2017	<a href="http://www.kakamega.go.ke">www.kakamega.go.ke</a>
Nairobi CIDP 2013-2017	Elaborates the county plans and strategies for achieving women's empowerment in the period 2013-2017	<a href="http://www.nairobi.go.ke">www.nairobi.go.ke</a>
Nairobi CIDP 2018-2022	Elaborates the county plans and strategies for achieving women's empowerment in the period 2018-2022	<a href="http://www.nairobi.go.ke">www.nairobi.go.ke</a>
Nairobi CPSB Report 2015/2016	Records of county achievements on women's empowerment in the financial year 2014/2015	<a href="http://www.nairobi.go.ke">www.nairobi.go.ke</a>
Nairobi CPSB Report 2016/2017	Records of county achievements on women's empowerment in the financial year 2016/2017	<a href="http://www.nairobi.go.ke">www.nairobi.go.ke</a>
Kenya Vision 2030	Highlights the importance of the social pillar in achieving economic development in Kenya	<a href="http://www.vision2030.go.ke">www.vision2030.go.ke</a>



## CASE STUDY

### Nairobi City County

According to Nairobi City County CIDP, Nairobi is one of the 47 counties in Kenya. The county has a total area of 696.1 Km<sup>2</sup> and is located between longitudes 36° 45' East and latitudes 1° 18' South. It lies at an altitude of 1,798 meters above sea level. It is divided into seventeen constituencies/sub-counties. In 2009, the county population was projected to be 3,138,369 and is expected to rise to 4,941,708 in 2018, 5,433,002 in 2020, and 5,958,338 in 2022, respectively. The female population projections from age cohorts 0-4, 5-9, 10-14, 15-19, and 20-24 remain slightly higher than that of males except for those under five, where the number of boys is higher than girls. Nairobi commands the largest share of formal sector wage employment in Kenya, with 453,000 people. The manufacturing industry accounts for the highest wage employment, followed by trade, restaurants, and hotels. The construction, transport, and communications industry also generate wage employment. Other important sectors include finance, real estate, and business services. Nairobi's main formal employment zones are the Central Business District (CBD), the industrial area, Mombasa road, Thika road, and Dandora.

According to KNBS (2019), Nairobi County had a labor force of 2,148,605, comprising 1,034,009 females and 1,114,596 males. Of the 2,148,605 persons in the labor force, 1,832,751 were classified as employed, while 315,844 were seeking employment. The youthful proportion of the labor force consists of 561,457 males and 648,756 females. The level of unemployment in Nairobi stands at 14.70%, with the female unemployment rate standing at 18.99 percent while that of males is at 11.55%.

The County Public Service Board (CPSB) 30-page annual report for the year 2015/16 indicates that Nairobi County has 12,967 staff. There are 2,371 employees under job group C, the highest in the county. Further, the report indicates the employee numbers and terms of engagement, staff that has separated with the county, and the skill profile of staff. Interestingly, from the report, the county recruited 542 new staff in 2015 but did not desegregate the data based on gender representation, making it difficult to evaluate women's empowerment efforts. The 16 paged CPSB report for 2016/17 illustrates the job qualifications per job and notes that many lower cadres staff are unskilled. Besides, the reports highlight the employee numbers and terms of engagement, with a majority under the permanent and pensionable category (11,936). A separation matrix also shows staff who have ceased to work with the county. The majority are retirees (231). The report has also highlighted staff on disciplinary matters, but all this reporting lacks data disaggregation based on gender representation.

Nonetheless, some attempts were made in the same period when 62 new staff were recruited. Data indicates that 18 females and 44 males were engaged, indicating a 29% female employment rate. It will be interesting to find out what happens to accurate gender reporting in successive years as the country implements devolution.

While admitting this inequity and inequality, the CIDP 2018-2022 concludes that gender inequality affects women's access to and control of resources and political positions in Nairobi County. The gender ratio in primary schools stands at 1:1, and the gender parity index of the

gross enrolment ratio in secondary schools stands at 0.8 compared to 0.834 for the country. At parliamentary representation, the female representation stands at 37.5%, and the unemployment ratio for males to females stands at 1:1.2. Out of eight parliamentary constituencies in the county, there were only three female Members of Parliament (in the tenth Parliament 2013-2017), all of whom served in the cabinet. The CIDP recommends that there is a need for the county government to empower women through training to equip them with relevant skills to enhance their productivity. The CIDP also reports that increased violence against women, physically, sexually, or psychologically, is a challenge to achieving gender balance. There is a need to establish a gender-based violence desk at the sub-county level to address issues affecting both men and women and children. Financial services should be enhanced to enable them to access funds for their small enterprises. Community mobilization should be scaled up to have more women receive funding from the Women Enterprise Fund (WEF). Healthcare services that address women of reproductive age should be scaled up to promote maternal and child health.

### **Kakamega County**

According to the CIDP 2018-2023, Kakamega County is located in the county's western region with an area of 3,051.3 km<sup>2</sup>. It has an estimated population of 2,079,669 with a density of 682/km<sup>2</sup>. It is divided into twelve sub-counties, sixty wards, one hundred and eighty-seven Village Units, and four hundred Community Administrative Areas. Politically, it comprises twelve constituencies and sixty wards. The climate is conducive to many on-farm activities, including crop and animal production.

The county had a population of 1,660,651, comprising 800,896 males and 859,755 females, giving a population distribution of 48% male and 52% female (KNBS 2019). This population is projected to grow at an annual growth rate of 2.5%. Based on this annual growth rate, the county population is projected to be 2,078,327 people by 2018 and grow to 2,184,885 and 2,296,907 by 2020 and 2022, respectively. Agriculture employs over 80 percent of the population in the county, mainly in rural areas. More wage earners are in environmental protection, water, housing, energy, infrastructure, and ICT sectors. They mainly rely on casual employment on farms, factories, house construction, water protection, drilling, communal labor, cane weeding, and the boda-boda trade. According to the 2009 census report, the number of people employed per sector included 756,711 in agriculture, 34,052 in other sectors, and 2,554 in wage employment. Expansion of these sectors through subsidies and incentives to spur growth will expand the employment base in the county. Appropriate training in relevant fields will enhance job creation and absorption.

The county has an estimated 793,371 people in self-employment, mainly in Agriculture and Rural Development sectors. Other sectors that form many self-employed persons include the Jua Kali artisans, cottage industries, and boda-bodas. According to the 2009 Population and Housing Census, the self-employed males were 338,187, while females were 359,333 equals 697,520. Those with skills and are seeking employment but self-employed in either one of these sectors were 37,125 males and 36,492 females, a total of 73,617. Of these self-employed persons, most of them are engaged in agricultural labor. The rest of this group is involved in

mining, forestry, brickmaking, and construction. However, a substantial number of self-employed might be under disguised unemployment.

According to the 2009 Population and Housing Census, the county's labor force stood at 825,276 and was projected at 889,552 in 2012. It constitutes 471,779 males and 417,773 females, representing 26.5 percent and 23.5 percent of the county's projected population in 2012. By 2022, the labor force will be estimated to be 1,007,994 persons. The county must create investment opportunities, exploit the untapped potential, and enhance skill development.

According to the Population and Housing Census of 2009, the county's unemployed population stood at 196,938, representing 22.04 percent of the total labor force. However, it is worth noting that those seeking employment are 37,125 males, while the females are 36,492, equal to 73,617. Those seeking employment are essentially the youthful population. These represent those people with the necessary skills and qualifications who reported that they were qualified two weeks before the census and actively pursued the jobs.

The CPSB report for 2015/16 is a 55-page document that indicates that 507 new staff were recruited. The report concludes that compliance with the constitutional requirements on gender and youth representation was achieved in 62% of youths. Still, overall there was 61.97% male against 38.03% female representation of the employed staff. Among the contract staff, the female gender dominated the selected staff due to the nature of the jobs skewed towards the said gender. Moreover, the report presents information on the ethnic composition of staff recruited in 2015, with the Luhya constituting 89.34%. The report also shows the regional representation of employed staff, with 77% being residents of Kakamega County. Moreover, apart from disaggregating data on a gender basis, the report presents a detailed account of the gender representation of staff employed in its 12 sub-counties.

Moreover, the report shows the staff composition per contract type based on gender representation. From the data, 99.6% represent female employees on contracts for Early Child Development Education, 39% under regular employees, and 79% as contract nurses. Males seem to dominate the regular employee category more than the contract. The report also lists all job opportunities advertised in 2015, those shortlisted, interviewed, and selected, but fails to desegregate the data based on gender representation. In 2016/17, CPSB's 55-page report indicates that 292 new staff were recruited, with 58.21% as males and 41.7% as females. Ethnic representation is also shown, which means the Luhya had 94.53% of the slots. The staff's representation per sub-county, regional representation, and distribution per job group was also tabulated, but in this case, no desegregation based on gender was done.

Interestingly, a breakdown of promotion conducted in the year indicates that under health services, with 918 staff promoted, 602 females were promoted. Staff training conducted was disaggregated in gender terms. Generally, in the two reporting timeframes, there seems to be a lack of consistency in gender reporting, which may negatively impact progress toward women's empowerment.

Nonetheless, as of 2018, the CIDP 2018-2023 reports that the county staff establishment was 57.5% female and 42.5% male, comprising youths (18-35 years) at 76.2% and 23.8% (36 years and above). Compliance of the Board with Constitutional requirements on gender and youth representation was achieved at 62% youth, 61.97% male against 38.03% female representation of the employed staff in the year. The CIDP concludes that the general situation

of indicators in the county shows a general improvement in the status of sustainable development, including roads, access to clean and safe water, access to quality healthcare, energy access, education, and food production.

## DISCUSSION

Kenya has robust legal and policy mechanisms for entrenching women's empowerment in sustainable development. The constitution and the country's Vision 2030 have outlined bold and deliberate intentions toward incorporating women in development, as shown in Table 1. Moreover, the County Governments Act of 2012 is quite unequivocal. It compels every devolved unit in the country to comprehensively submit an annual report regarding development progress covering all socio-economic aspects. This finding contrasts sharply with World Bank (2010), which found that most developing countries' governance laws are geared towards discriminating against women.

Interestingly, this study found that despite the vast differences in environment and socio-cultural contexts, the CIDPs and the CPSB annual reports for Kakamega and Nairobi Counties covering 2013-2017 have many similarities and differences. In general, they indicate that even though there is a commitment in these counties on their quest to realize women's empowerment through county employment opportunities as required by national policy on gender balancing, there is still a long way to go to actualize real empowerment. These findings seem to agree with what Gichuhi and Njuguna (2017) found in the case of Nakuru County and Kyuvi (2017) in the case of Mathare in Nairobi, who reported that women's empowerment momentum was gathering despite many challenges.

Moreover, even though both counties prepared their first and second CPSB Annual reports in the financial year 2015/16 and 2016/17 under section 59(1)d of the County Governments Act, 2012 covering human resource planning, results indicate that the reporting practice varies considerably. For example, while the annual CPSB reports for Kakamega appear to be more detailed and are presented in 50 pages for the financial year 2016/2017 and 55 pages in the year 2015/2016, the CPSB reports for Nairobi are reported in 30 pages for 2015/2016 and 16 pages for the year 2016/2017 and provide scanty information on gender representation in general.

Similarly, in both counties, the CIDPs for the period 2018-2022 review the achievements of the CIDPs for the period 2013-2017 but provide inconsistent and scanty information on the actual status of women's empowerment in the two counties. Interestingly, the two counties conclude on their women's empowerment progress by reporting the gender representation statuses of their counties for the period 2013-2017. In Kakamega County, the CIDP 2018-2022 concludes that the county staff establishment was 57.5% female and 42.5% male, comprising youths (18-35 years) at 76.2% and 23.8% (36 years and above). Whereas for Nairobi County, the CIDP 2018-2022 concludes that gender inequality affects women's access to and control of resources and political positions in the county. In both cases, gender representation is equated to women's empowerment. This paper submits that such seemingly clandestine reporting on gender may have the impact of disempowering women by denying them access to opportunities despite their vast numbers. World Bank (2003) and Mahmud and Becker (2012)

posit that women form the most significant portion of the global population and hence should be allowed greater economic opportunities.

However, according to IDLO (2019), the rate of women's empowerment could be hastened if more women were in the decision-making positions of organizations. This study notes that human resource planning must establish deliberate measures to achieve the desired state. For instance, IDLO (2019) indicates that 50% of women are in senior management positions in the UN Secretary General's office, and planning to increase this number shortly. Kakamega County may have followed IDLO's (2019) footsteps, as indicated by their women representation of 57.5%. The county seems to have adopted a bolder approach to reporting gender representation by disaggregating staff recruitment, training, and promotion, among others, based on gender. Disaggregation of staff based on gender continues to the sub-county levels in efforts to comply with the constitution's provisions, which require all elective and appointive positions to reflect 30% women representation. Nevertheless, more efforts to empower women are required in Kakamega County because women or females, apart from dominating the contract employment type in the county, constitute 50.6% of the county labor force and 49.5% of the labor force seeking employment in Kakamega County.

In Nairobi County, efforts have also been made to empower women through equal employment opportunities, as shown in the case study. In 2015/16, up to 542 new employees were recruited under 43 different jobs, with 301 staff constituting 55.5% female. However, when the PSG job classification is applied to the outcome and assuming that Medical Officers and Pharmacists, as written in the report, represent officers in lower management or decision-making category, Nairobi County had 31 women representing 51.67% if the authors add that to the list of chief officers and directors indicated in the report. Unfortunately, with the same assumption, 270 women also represented 55.9% of women in lower cadres. Nonetheless, because of the vast and unemployed female population, more opportunities should be available for women's empowerment. These findings agree with CIDP 2018-2022 conclusion that there is a need to address gender inequality in Nairobi County with more emphasis on women's empowerment.

## CONCLUSION AND POLICY IMPLICATIONS

Study results have shown that one of the devolution's significant attributes is promoting women's empowerment. Following the introduction of devolution, the two counties have made positive progress towards women's empowerment in compliance with the 30% women representation in elective and appointive positions and other policy provisions. Moreover, findings have shown that women represent much of the labor force in the two counties.

However, due to inconsistent reporting across the two counties, available data on county employment statuses appear insufficient, thus providing a limited basis for ascertaining the actual condition of women's empowerment through devolution processes in the counties examined. Nonetheless, given the enormous women population and unemployment rate, this paper concludes that there is a need to expand opportunities for women in the counties. Further, besides recommending a GDI and standardized gender representation reporting

template, there is a need to collect and collate additional data from the private sector to holistically address women's empowerment issues in counties.



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# INDIA@75: ASSESSING INDIA'S USE OF SOFT POWER AS A FOREIGN POLICY INSTRUMENT

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**Abstract:** *The term soft power has become a catch-all-phrase for public and cultural diplomacy since Joseph Nye introduced it in 1990. India has had several historical and cultural advantages regarding its influence in foreign countries. While India and Indians enjoyed goodwill in most countries, the sudden interests in India among the policymakers, businesses, and politicians were mainly after the 1992 economic liberalization that had opened the Indian markets to foreign investments. Besides the nation-branding exercises globally, New Delhi employed soft power instruments in countries it deemed to have more significant interests, from traditional allies like Bhutan and Afghanistan to the countries in the West in the last three decades. Nevertheless, how successful has India been in exploiting its cultural linkages and using its soft power in its branding? This question becomes pertinent as, in recent years, India has often received negative press coverage in international media, and on several freedom/democratic indices, its rankings have gone down. As India celebrates 75 years of independence as Azadi Ka Mahotsav (a grand celebration of independence), this paper assesses the scope of its soft power as a foreign policy instrument, points out its shortcomings, and recommends the possibilities.*

**Keywords:** *Soft Power; Cultural Diplomacy; Public Diplomacy; India; Bollywood; Azadi Ka Mahotsav; Foreign Policy*

## INTRODUCTION

"Our 75<sup>th</sup> year as a free nation is also the starting point to envision where we will be on our centenary", India's External Affairs Minister EM Jaishankar noted at a ceremony organized by the Indian Council of Cultural Relations (ICCR) to mark the grand celebration of 75 years of independence - *Azadi Ka Mahotsav* - in August 2021 (MEA Media Center 2021). He further stressed: "The bold transformations at home will give us an increasingly salient role in the international system. As a democratic polity, a pluralistic society, an innovative economy, and a culture of unmatched diversity, our contributions have real weight and value. Our ability to harmonize tradition and modernity stands out in particular" (MEA Media Center 2021).

No doubt, India's stature has grown manifold in the international arena in the last few decades as the largest democracy and one of the fastest-growing economies. However, there are often occasions when India makes negative headlines in the international press, besides the strong reactions on social media for alleged violations and abuses of the very features that the EAM took pride in. As India celebrates the completion of 75 years of independence as *Azadi Ka Mahotsav* and assumes the presidency of G-20 in December 2022, this paper evaluates its soft power as an instrument of foreign policy. The article critically examines the scope of India's soft power instruments and achievements, explores the challenges, and points to opportunities to strengthen those initiatives further.

## Theoretical Underpinnings

Nye defines soft power as a state's "ability to get preferred outcomes through the co-optive means of agenda-setting, persuasion, and attraction", distinct from hard power, which relies on coercion and economic inducements (Nye 2011, 43). He says, "If a state can make its power seem legitimate in the eyes of others, it will encounter less resistance to its wishes. If its culture and ideology are attractive, others will more willingly follow" (Nye 1990, 167). "Power over opinion is the third form of power", according to E.H. Carr, and is "not less essential for political purposes than military and economic power, and has always been closely associated with them" (Carr 2016, 120). Nevertheless, the "ability to force someone to do something" does not always have to be coercive; and can be an attractive power too that influences someone to do certain things. Thus, the "proof of power lies not in resources but in the ability to change the behavior of states" (Nye 1990, 155).

Nye's soft power builds upon the "three-dimensional power" of Lukes (1974) and the idea of "structural power" of Jeffery Isaac (Gallarotti 2011), as well as the "policy of prestige" of Morgenthau (1997). According to Nye, the primary soft power resources are political values, culture, and foreign policies. He points out that universal and shared values are likely to attract more while "narrow values and parochial cultures are less likely to produce soft power" (Nye 2004, 11). Stressing the "role of image and identity in international relations", Simon Anholt argues that the nation's brand can be "enhanced through strategy, substance, and symbolic actions" (Anholt 2013). Consequently, soft power is about the world's perceptions of what that country is all about. "The associations and attitudes conjured up in the global imagination by the mere mention of a country's name is often a more accurate gauge of its soft power than a dispassionate analysis of its foreign policies", according to Shashi Tharoor, author, former diplomat, and ex-minister (Tharoor 2012, 277-78). Hence, a country must invest in public diplomacy and national branding.

### **STRONG FOOTINGS OF INDIA'S SOFT POWER: SPIRITUAL LEADER OF THE WORLD - VISHVA GURU?**

The term soft power has become a catch-all-phrase in public and cultural diplomacy. Emphasizing the importance of soft power in foreign policy, India's Union Minister Anurag Thakur noted at a think-tank dialogue in April 2022, "the nation needs to have a hard power but to maintain a friendly relationship and to exist beyond boundaries, the nation needs soft power as well, as it touches hearts" (PIB Delhi 2022a).

India naturally has had several historical and cultural advantages regarding soft power. In *Communicating India's Soft Power: Buddha to Bollywood*, Daya Kishan Thussu writes, "this rare combination of a civilization which has strong Hindu-Buddhist foundations, centuries of Islamic influence, and integration with European institutions, and ideas, gives India unparalleled cultural resources to deal with the diverse, globalized, and complex realities of the twenty-first century" (Thussu 2013, 11). Legacies of Hinduism and Buddhism bind India with its neighbors like Nepal, China, Bhutan, Tibet, countries in East Asia, and so on, even today. Consequently, its cultural linkages, and hence soft power assets, are strongest amongst its neighbors, although there are



also some frictions owing to political and historical reasons (Reyaz 2015a). Further, its unique syncretic culture and Indian Islam have historical linkages with Turkic-Persian culture. India generally enjoys immense goodwill among countries in its West, from Pakistan to Morocco, as well as in Europe and America (Reyaz 2015b).

India's branding as a land of diversity, pluralism, and tolerance began even before independence. Mahatma Gandhi's emphasis on *ahimsa*, leading a principled non-violent freedom struggle, inspired several such movements worldwide. India assiduously invested in its soft power as an instrument of foreign policy, even before the term came into vogue in international relations. It relied on its rich history, heritage, diverse culture, pluralism, etc., in realizing its global ambitions. India was thus projected as a *Vishva Guru* (world leader), "a civilization that could usher in moral values and ethical standards into international relations" (Kugiel 2016, 39). Accordingly, it "pursued a foreign policy agenda backed by the power of moral arguments rather than arguments of power and used soft power to compensate for its hard power deficiencies" (Kugiel 2016, 39).

### Soft Power as a Foreign Policy Tool

While India and Indians enjoyed goodwill in most countries, whether in the east or the West, it cannot be denied that the sudden interests in India among policymakers, businesses, and politicians were mainly after the 1992 economic liberalization (Mullen 2015). It opened the large Indian market to foreign investments and goods, besides providing cheap labor. The nuclear tests of 1998 had put India in the elite club of those possessing nuclear weapons. Despite initial sanctions, it forced the United States, European countries, and China to take New Delhi more seriously. Many commentators hence mark 1998 as a "turning point" in India's foreign relations, not just because of "ideological or idealistic reasons" but pure "pragmatic necessity" (Kugiel 2016, 52-53). The Indo-US nuclear deal of 2009 was an acknowledgment of India's rising prestige and power (Pant 2009). In terms of nominal GDP, India is now the fifth-largest economy globally and is slated to become the third-largest by 2050, after the USA and China (Hindustan Times 2020).

Indian IT professionals, a large and influential diaspora population, and the Indian film industry, in general, have emerged as new sources of India's soft power (Thussu 2013). From the 1990s onwards, Hindi films became global, followed by Tamil and other regional languages films, helping create goodwill for India. The "Incredible India" campaign launched in 2002 by the Tourism Ministry has been one of the most successful campaigns of nation branding that helped increase tourism manifold (Amaresh 2021). Sports have always acted as a bridge in diplomacy (Murray and Pigman 2014), and the growing dominance of India in cricket, as also the Indian Premier League (IPL), have helped build a positive image for India as well (Blarel 2012).

Yoga has become a global phenomenon, not just among the Indian diaspora but also among the western population. Terming it an "invaluable gift of India's ancient tradition", Prime Minister Narendra Modi advocated at the United Nations General Assembly in September 2014 to declare 21 June, the day of the summer solstice, as International Yoga Day, which was unanimously approved by the end of the year (United Nations Information Centre 2014). Since then, every year, Indian embassies and counsels worldwide organize annual events besides

promoting yoga training throughout the year. Meanwhile, the United Nations Educational, Scientific and Cultural Organization (UNESCO) has declared 40 World Heritage sites, 32 of which are cultural sites, placing India in the sixth position in terms of most declared heritage sites (UNESCO n.d.).

Public diplomacy has become an essential instrument of nation branding and soft power that help build a favorable narrative in the short run and reputation and goodwill in the long run. The Foreign Ministry's dedicated External and Public Diplomacy Division tackles public diplomacy and media outreach. The MEA and the Ministry of Culture manage India's cultural diplomacy. The Indian Council for Cultural Relations (ICCR) is an autonomous body that works towards fostering and strengthening "cultural relations and mutual understanding between India and other countries; to promote cultural exchanges with other countries and people, and to develop relations with nations" (ICCR n.d.). Besides scholarships for studying in Indian universities and exchange programs, the ICCR also runs 38 cultural centers and 69 chairs of Indian studies in different countries, the former attached to the embassies or counsels and later to universities abroad.

It is a fact that "soft power depends not only on cultural attractions, political values, and a legitimate foreign policy but also on the appeal of a country's political and economic record" (Mullen 2015). As India grew economically more robust, it slowly began to exploit its potential to realize its aspirations of emerging as a regional power by indulging in economic diplomacy, mainly through foreign assistance programs. Although the amount of foreign aid that India offers as a "development partnership" is tiny compared to many western countries, Japan or China, what distinguishes India's assistance is that often it comes without any strings attached; that is, India does not do it at the cost of bringing democracy or demanding regime change, and thus these are not seen with hostility by the ruling regime in those countries (Mathai 2013). The foreign assistance program of India is a "strategic tool to showcase India's technical strengths and achievements and to harness and promote India's political and economic interests in the world" (Sikri 2009, 239). India's largest economic aid goes to Bhutan, Mauritius, Maldives, and Nepal (Statista n.d.). Before the Taliban takeover, Afghanistan too received a significant chunk, though not among the highest, but got disproportionately high media coverage, understandably for strategic gains. However, the events of August 2021 that brought the Taliban back to power exposed the shortcomings of over-reliance on soft power without adequate strategic thinking (Reyaz and Ahamed 2022).

## **PM Modi and the Image of India Abroad**

PM Narendra Modi has brought certain vibrancy in otherwise cold-hearted diplomacy by emphasizing on historical linkages and age-old ties and turning each foreign visit into a spectacle. Leaders of the ruling Bharatiya Janata Party (BJP) often stress that *Vasudhavaiva Kutumbakam* or the world is one family, is a philosophy determining India's foreign policy (Patil 2022). Buoyed by rapid economic growth, largely non-interfering stances on domestic politics of other countries, and generosity within its limited capacities, India has garnered respectability among world leaders. It is due to the growing stature of India that PM Modi could publicly rebuke Russian president Vladimir Putin over the Ukraine war on the sidelines of the Shanghai

Cooperation Organisation summit in Uzbekistan. He said that “today's era is not of war (...) [but of] democracy, diplomacy, and dialogue” (PIB Delhi 2022b).

However, in India, the BJP government is often criticized for undermining democratic institutions and abusing the powers of central investigating agencies against opposition leaders and activists. Both the BJP government and their ideologues, however, see those as signs of “the effort for a resurgence of the idea of Bharat” that will truly make it the *Vishva Guru* (world leader) (Nandakumar 2020). Despite efforts by the government and pro-government civil society groups, India often makes international headlines for the wrong reasons questioning the application of its constitutional values in practice. Violence against Dalits (Gettleman and Raj 2018) or minorities (Mogul and Gupta 2022), anti-CAA-NRC protests (Siddiqui 2020), farmers’ agitations (Bellman and Roy 2021), and other such critical news end up grabbing international headlines. Significantly, in the wake of the anti-CAA protests and the Delhi riots in 2020, and later during farmers’ agitations, social media had gone abuzz with criticisms of the Indian government and its policies, often by activists and celebrities from other countries, putting a “dent in India’s soft power image” (Krishnan 2021).

India has traditionally enjoyed goodwill among the Arabs. However, there is no denying that “the over-zealot Hindutva leaders and trolls are denting India’s image of tolerance and secularism, particularly in the Muslim world, forcing the foreign office and the diplomats in the gulf capitals to scramble for a concrete response” (Reyaz 2020). In fact, in June 2022, the government faced huge diplomatic embarrassment when India’s Ambassador to Qatar was summoned by the Qatari Foreign Ministry, demanding an apology even as Vice President Venkaiah Naidu was in Doha following “derogatory” statements by a few BJP leaders on the Prophet (Scroll Staff 2022). The government was quick to issue statements terming the spokespersons and leaders of the ruling party as “fringe elements” and assuring “strong actions” against them (Scroll Staff 2022). It should be mentioned here that overall, India has improved its bilateral relations with the countries in West Asia in the past decade regarding trade and strategic interests, although those social media rants are reflections of anger on the streets (Kumaraswamy 2022; Quamar 2022).

When Jordan’s King Abdullah II visited New Delhi in 2018, PM Modi attended the “Islamic Heritage: Promoting Understanding and Moderation” event with him at the India Islamic Cultural Centre in the national capital. PM Modi emphasized in his address, “Pluralism is what makes India. Our diversity strengthens us. This is the land where people of various faiths and beliefs happily coexist, guided by universal values of harmony and togetherness” (Reyaz 2018). He stressed on the “universal sense of oneness” as India assumed the G-20 presidency in December 2022, hoping that the tenure would bring “healing, harmony and hope” to the world (BBC 2022). However, actions on the ground often do not match the words spoken. PM Modi has also been accused of pushing the Hindutva agenda globally (Daniyal 2022; Sen 2022). The New York Times noted in a column:

It is India’s credentials as the world’s largest democracy that Mr. Modi rides on the global stage. But at home, diplomats, analysts, and activists say, Mr. Modi’s government is undertaking a project to remake India’s democracy unlike any in its 75 years of independence - stifling dissent,

sidelining civilian institutions, and making minorities second-class citizens (Mashal 2022).

In the Democracy Index of The Economist's Intelligence Unit (2020), India dropped to 53rd position and was labeled a "flawed democracy" in 2020 from once being ranked 27<sup>th</sup> in 2014. In the Democracy Index of 2022, it did improve its score slightly to come to 46<sup>th</sup> position but remains under the "flawed democracy" category (The Economist Intelligence Unit 2022). Similarly, Sweden-based V-Dem Institute's Democracy Report 2021 noted that the "world's largest democracy turned into an electoral autocracy" (V-Dem Institute 2021). The government's response to these criticisms has been on expected lines, questioning the parameters of analysis, terming them biased and hypocritical, and stressing that India has "robust institutions and well-established democratic practices" (Biswas 2021). The government has also routinely blamed the anti-government protests as "anti-national" activities of "*Tukde-Tukde* (divisive) gang, Islamists and leftists" funded by "foreign elements" (Ohri 2020; DNA 2021). However, at some level, the government is also "worried India rating may turn junk", impacting its international branding and image, and has pushed for the "narrative management strategy" (Dutta 2022).

## CONCLUSION

India had succeeded in projecting itself as the "land of the better story" within its limited resources (Tharoor 2007). Nevertheless, it continues to have a mixed image abroad, where the country and its people generally enjoy much goodwill among foreigners. However, when exploiting them to its advantage, New Delhi has still not been successful in reaping the desired strategic outcomes beyond sweet talks appreciating its rich heritage, culture, films, spiritualism, Yoga, etc. Although institutions like ICCR and the External and Public Diplomacy Division of the MEA have done commendable jobs in nation-branding, there seem to be some gaps between India's ambitions of emerging as *Vishva Guru* (world leader) in the XXI century and its actions on the ground. Politicians and policymakers may use the term soft power sweepingly. However, Indian foreign policy is still primarily dominated by security and trade concerns, and so far, they did not have any concrete policy on soft power (Kugiel 2012).

New Delhi's use of soft power in foreign policy largely remains "indirect and inconsistent" (Blarel 2012); hence difficult to ascertain. For example, during the pandemic, India launched an ambitious Vaccine Maitri Program in January 2021 to provide free vaccines for free or at economical rates to its neighbors and other development partners (Sharma and Varshney 2021). However, when it started facing shortages during the second wave, New Delhi abruptly stopped the export in April of the same year, leaving many countries in the lurch and forcing them to explore other options, including China (it was finally relaunched in November 2021 after seven months halt) (FP Staff 2021). Many hence argue that "Indian soft power has fallen far short of expectations (...) (due to its) inability to capitalize on its soft power resources" (Mukherjee 2014). Nonetheless, Foreign Minister Jaishankar believes that by underlining its "greater capabilities and confidence", India can help build a "unique brand as generous power" (Jaishankar 2020).

India does not yet figure in “The Soft Power 30” - a global ranking of soft power published by Portland Communications and the USC Centre on Public Diplomacy from 2015 onwards. In the 2019 edition, countries from Asia that make it to the list include Japan (8), South Korea (19), Singapore (21), China (27), and Turkey (29). The same report also has “the Asia Soft Power 10”, where India is eighth-placed, above Indonesia and the Philippines. In the Global Soft Power Index, published by Brand Finance, India ranked 27 in 2020 but fell nine places to 36 in 2021; it made some improvements in 2022 with 29 rankings, although it is still lower than the 2020 position. Nye pointed out that universal and shared values are likely to attract more while “narrow values and parochial cultures are less likely to produce soft power” (Nye 2004, 11).

Moreover, it is said that foreign relations often reflect domestic politics. If India wants to emerge as a *Vishva Guru*, it must address and resolve the ideological challenges saddling its domestic politics. Otherwise, investments in soft power assets and nation branding may remain insufficient and never yield the desired outcomes.

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# EFFECT OF CORRUPTION ON FOREIGN DIRECT INVESTMENT INFLOWS IN COUNTRIES OF THE WESTERN BALKANS

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**Abstract:** The purpose of this study was to investigate the effect of corruption on Foreign Direct Investment (FDI) in the Western Balkans countries, including Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, North Macedonia, Serbia, and Albania. Secondary data from The World Bank, Transparency International, and International Monetary Fund databases were utilized to complete this study for 2012-2020. The built model of multiple linear regression included four independent variables, namely: Corruption Perception Index (CPI), Western Balkan Corruption Ranking (WBCR), Exchange Rate (EXG), and Inflation Rate (INFL), as well as FDI as a dependent variable, and data effects were analyzed through the SPSS scientific research software program. The results found that if CPI and WBCR were to increase by one unit, FDI would decrease by 0.088, namely 0.624, while if EXG and INFL were to increase by one unit, FDI would increase by 0.165, namely 0.236. In order to fight corruption and potentially attract more foreign direct investment, the governments of these countries should work to harmonize their anti-corruption laws with those of the European Union. In order to prevent the negative consequences of FDI inflows, they should also maintain a balanced rate of inflation, which entails stabilizing exchange rate fluctuations.

**Keywords:** Foreign Direct Investment; Corruption; Inflation Rate; Exchange Rate; Western Balkans

## INTRODUCTION

Numerous studies on the impact of corruption on foreign direct investment (FDI) have been conducted by different authors. The impact of the corruption phenomena on FDI inflows is a topic that, for Western Balkans countries, is evaluated without sufficient scientific research. As a result, we have aimed to use the model at hand to identify the relevant effect. Studies on FDI gained popularity, particularly after World War II (Hosseini 2005), because they improved our understanding of how economic agents behave and how economies generally work (Denisia 2010). FDI inflows are always seen as an important source of financing from abroad, not only between economies in transition and those under development but also between the economies of developed countries. FDI is an investment that reflects a lasting interest and control by a foreign direct investor, resident in one economy, in a residence of an enterprise in another economy (foreign subsidiary) (UNCTAD 2021).

FDI fills crucial gaps in developing countries by providing investment funds, making foreign currency available, and raising tax revenue for the government (Quazi, Vemuri, and Soliman 2014). However, for the Western Balkan countries in transition, the requirement for dynamic FDI inflows becomes one of the key prerequisites for their future economic development, given the lack of sufficient domestic savings and the narrowing opportunities for



further borrowing from international financial institutions (Popović-Avrić, Đenić, and Milenković 2014). In the OECD research (2002) on maximizing the profits and minimizing the costs of FDI for development, it is emphasized that developing and transition countries and economies have increasingly begun to see FDI as a source of development and economic modernization, income growth, and employment, thus following internal policies for the attraction of FDI in order to maximize the benefit from the presence of FDI in their internal economies. The Western Balkans region has seen a considerable increase in new foreign direct investment (FDI) since the 2008 global economic crisis. Furthermore, for the first time in countries in transition, FDI has flowed into the production sector (Krasniqi, Ahmetbasić, and Bartlett 2022).

Despite having roughly the same population composition and similar GDPs, all Western Balkan countries (except Albania) that emerged from the former Yugoslav Federation (until 2006, when Montenegro gained independence) had differing FDI inflows. In this regard, if we examine the FDI flow concerning GDP in the data of Graph 1, where the average percentage of FDI concerning GDP of each country is extracted from 2012 to 2020, it turns out that Montenegro has the highest average percentage (10.82%), followed by Albania (8.26%), Serbia (5.83%), Kosovo (4.32%), North Macedonia (3.19%), Croatia (2.44%), and Bosnia and Herzegovina (2.37%). Except for 2015 and 2020, which have a downward trend compared to the previous periods, FDI has played a significant role in the development of the seven Western Balkan countries, attracting a total cumulative gross FDI of nearly USD 61.93 billion from 2012 through 2020. The corresponding Graph shows that 2019, with almost 11.06 billion USD, saw the highest FDI inflows. Based on the data of Graph 3, we can see that the largest inflows of FDI for the period 2012-2020 (that is, cumulative of FDI) belong to Serbia at 24.75 billion USD, namely 39.97% of the total of 61.93 billion USD, followed by Croatia at over 12.96 billion USD, namely, 20.94% of the total FDI, and Albania at over 9.85 billion USD, while the rest of 14.35 billion USD or 23.18% belong to FDI inflows of other countries such as Montenegro (4.47 billion USD or 7.23%), Bosnia and Herzegovina (3.90 billion USD or 6.31%), North Macedonia (3.23 billion USD or 5.22%), and Kosovo (2.73 billion USD or 4.42%). From the data of Graph 4, we can see that the largest cumulative inflows of FDI belong to the period 2015-2016 in both World and European Union trend, while the largest inflows to the countries of the Western Balkans belong to 2019, while 2020 marks the biggest decline in FDI in all regions introduced. Western Balkans FDI inflows account for approximately 0.43% of global FDI inflows on average, though this trend has increased in the last two years, with 2019 at 0.72% and 2020 at 0.71%. FDI inflows in the economies of the Western Balkans emphasize the high dependence of the region, which mainly comes from EU member states such as Austria, Germany, Greece, Italy, the Netherlands, and Slovenia, as well as the United Kingdom, the United States, and the Russian Federation, which have been severely affected by the Covid-19 pandemic crisis (OECD 2020). The Covid-19 pandemic resulted in a worldwide slowdown in investment projects, and the prospect of a recession prompted multinational enterprises (MNEs) to reassess new projects, resulting in a 35% decrease in FDI flows globally in 2022, namely to 1 trillion dollars from 1.5 trillion dollars last year (UNCTAD 2021).

The level of corruption in the host economy is one of the factors identified as significant in determining the choice of FDI location, even though many factors, including production, employment, income, prices, exports, imports, and balance of payments, can affect FDI inflows in

developing countries and have an impact on the economic growth and general well-being of the host countries (Moustafa 2021). Developing countries can attract more FDI by creating a quality institutional structure, effectively fighting corruption, and creating sound macroeconomic policies that improve the investment climate and reduce costs, uncertainty, and risk perception (Türedi 2018).

## LITERATURE REVIEW

### Theoretical Framework

Extensive research and analysis have offered different perspectives and views to address the issues that corruption and its detrimental consequences to FDI have caused in various countries and societies. Empirical studies on FDI suggest that corruption does not affect FDI inflows; others suggest that corruption negatively impacts FDI inflows. However, some studies suggest that corruption positively impacts FDI inflows in a country, and others suggest that corruption has mixed results in FDI inflows and corruption. Foreign Direct Investment (FDI) is a capital investment with a minimum threshold of 10% and a goal of sustainable ownership and managerial interest (Hasan, Rahman, and Iqbal 2017). Corruption involves an implicit agreement between companies, pressure groups, and citizens who are trying to satisfy their selfish interests and exploit private benefits by paying bribes, as well as government officials and politicians who also tend to maximize their income by illegal means using their positions and the authority they possess (Gribincea 2017). Significant increases in global FDI flows have many implications for countries, such as the spread of technology, improvements in human capital, ease of access to global markets, and increased competition, making the macroeconomic and institutional determinants of FDI inflows extremely important for countries in attracting more FDI flows (Bellos and Subasat 2011). Foreign investors have, in recent years, paid considerable attention and importance to the institutional framework of the countries that undertake investments (OECD 2002). Some institutional aspects, such as the unpredictability of laws, regulations, and policies; excessive regulatory burden; government instability; and lack of commitment, play a major role in deterring FDI (Daude and Stein 2007). However, among the most important reasons for FDI are job creation, increased productivity, increased competition, increased exports, and access to international capital markets (Denisia 2010, 104).

Corruption is one of the key institutional factors. There are two primary views on how it affects FDI inflows: the view that suggests that corruption negatively affects FDI inflows as it increases costs, weakens transparency, property rights, and the competitive environment, and hinders the efficient functioning of governments, and the view that suggests that corruption positively affects FDI inflows as it can eliminate problems arising from weak institutions and regulations (Bellos and Subasat 2011). First of all, because it is simpler for investors to determine a project's profitability in countries with appealing, transparent, open economies and low levels of corruption, investments tend to flow there (Gasanova, Medvedev, and Komotskiy 2017). The CPI is typically used as a single quantitative variable to measure corruption as a key qualitative indicator with a two-way relationship in attracting or repulsing FDI inflows (Hasan, Rahman, and Iqbal 2017, 180). Corruption is measured through two variables, the Corruption Perception Index

(CPI) and the Western Balkans Country's Corruption Ranking (WBCR). The CPI measures how corrupt the public sector of each country is perceived to be, according to experts and business people, including 180 countries (Transparency International 2021), where countries are ranked based on cumulative scores ranging from 1 (highest risk level of corruption) to 10 (lowest risk of corruption) (Iloie 2015) namely, from 0 (very corrupt) to 100 (very clean). Meanwhile, the WBCR measures the country's ranking according to the degree of corruption, showing the progress achieved (through the number of promoted positions) or the regression achieved (through the number of reduced positions).

The inflation rate is a decisive factor in influencing the inflow of foreign investments (Project Guru 2016). According to Coban and Yussif (2019), inflation is estimated to have a two-way causal effect on FDI inflows. A stable inflation rate is desirable for attracting foreign capital (Siddiqui and Aumeboonsuke 2014, 68). A high inflation rate implies economic instability, risk, and confusion related to the failure of appropriate government policies, especially the fiscal and monetary policy mix, thus being associated with lower FDI inflows (Khan and Mitra 2014, 127). Another important factor in FDI activity is the behavior of exchange rates, which determines the price of the local currency about the price of a foreign currency and influences both the total amount of FDI that occurs and the distribution of these investment expenditures in many countries (Goldberg 2006). According to the author, a currency depreciates when its value declines relative to the value of another currency. This movement of the exchange rate has two potential implications for FDI, namely: first, it reduces wages and production costs in that country compared to those of its foreign counterparts; and second, anticipated exchange rate movements may be reflected in a higher cost of financing the investment project as conditions of parity. Therefore, the average rate of FDI inflows is positively and significantly impacted by the exchange rate under a favorable FDI environment (Alba, Park, and Wang 2009, 13).

## EMPIRICAL REVIEW

### Studies with Mixed Findings on Corruption

Factual findings from numerous studies have demonstrated that FDI inflows into a country have mixed views on corruption. De Jong and Bogmans (2011), who investigated the impact of corruption on international trade by evaluating the extent of corruption in an importing economy and comparing it with the level of corruption found in an exporting economy, discovered mixed results regarding corruption and FDI inflows. The results showed that both scenarios were important and interesting. However, the study found that corruption was more obvious in importing countries with ineffective customs since extended border delays had a major detrimental impact on global trade. The study's main conclusion (Godinez and Liu 2015) evaluated the relationship between corruption distance and FDI inflows. It found that firms with residents in high-corruptibility countries are typically unaffected by the level of corruption in the host countries where investment opportunities are found because they share a common background and have the skills necessary to handle the situation. The effects of corruption on FDI inflows were studied using China and India as case studies, and the results varied for both nations. Despite the belief that corruption facilitates FDI inflows into an economy

(Hasan, Rahman, and Iqbal 2017, 180) found that the former had a positive impact while the latter had a negative one.

In their study, Peres, Ameer, and Xu (2018) examined the impact of institutional quality on FDI, classifying countries as developed or developing through corruption control and the rule of law indicators. The findings reveal that institutional quality positively and significantly impacts FDI inflows in developed countries. In contrast, the findings for developing countries reveal that institutional quality (*ceteris paribus*) has a non-significant impact because of the weak structure of institutions.

### **Corruption's Non-Impact on FDI Inflows**

Bellos and Subasat (2011) applied the panel gravity model to examine the relationship between FDI inflows and corruption in 15 countries with transition economies from 1990 to 2005. The study found that corruption had no statistically significant impact on FDI inflows. Bayar and Alakbarov (2016) examined the impact of corruption on FDI inflows in 23 developing economies, finding that corruption and the role of the law had no significant impact on FDI inflows. Also, Busse and Hefeker (2007) tested the effects of various indicators of institutional quality on FDI for 83 developing countries and 49 less developed countries, and their findings showed a non-significant relationship between FDI and corruption. Estrin and Uvalic (2016) show that FDI inflows have had almost no significant impact on the added value of production, employment in production, and exports of the Western Balkan countries.

### **Corruption's Harms on FDI Inflows**

The majority of research by various authors shows a relationship and a negative impact between corruption and FDI, from the point of view that corruption is initially viewed as an indicator with a negative impact on FDI. The authors Gasanova, Medvedev, and Komotskiy (2017) evaluated the impact of corruption on FDI inflows, and the findings showed that countries with low levels of corruption and favorable economic environments attract FDI inflows, while those with high levels of corruption and unfavorable economic environments do not. Pupovic (2012), Woo J. Y. (2010), Brada, Drabek, and Perez (2012), Alemu (2012), Mengistu Alemu (2012), and Quazi (2014) investigated the effect of corruption on FDI and found that corruption had negative effects on FDI inflows. Castro and Nunes (2013) investigated the impact of corruption on FDI, and the findings found that corruption had negative effects on FDI inflows. Mauro (1995) analyzed a data set consisting of subjective indices of corruption, the amount of bureaucracy, the efficiency of the judicial system, and different categories of political stability for a cross-section of countries, finding that corruption reduces investment and this causes a reduction in economic growth. Also, corruption worsens poverty and income distribution (Gupta, Davoodi, and Alonso-Terme 1998). As such, corruption is considered an influential factor in the underdevelopment of the economies of various countries, including developed countries. In the econometric study of the relationships between key variables conducted by Akindele (2005) through a modified production function, which includes work, capital, political instability, corruption, and income inequality, it was found that the CPI (corruption) is negative. As such, it

shows that corruption delays development efforts, noting that even a nation rich in human and natural resources may fail to develop beneficially for most citizens where corruption exists.

Empirical data from significant studies suggests that corruption plays a negative role in attracting FDI to Western Balkans countries and is inversely correlated with income levels in the region, with higher levels of corruption being associated with lower per capita income (Zeneli 2016). According to this study, corruption impedes the region's economic growth by distorting government expenditures, creating negative current account balances, evading taxes, stifling competition, and reducing economic innovation.

### **Corruption's Positive Impact on FDI Inflows**

While analyzing their study on the impact of corruption on FDI, the authors Quazi, Vemuri, and Soliman (2014) confirmed the theory of corruption assistance, implying the acceleration of FDI inflows through corruption, and this, as the general regulatory environment, is likely to be weak. Saidi, Ochi, and Ghadri (2013) investigated the relationship between institutional variables and FDI inflows in developed and developing countries and discovered that political stability, regulatory quality, and corruption control positively impacted FDI inflows. Kersan-Škabić (2013) investigated the institutional determinants of FDI inflows in Southeast European countries and found that corruption significantly impacted FDI inflows. Likewise, the authors Like and Eichler (2016) investigated the institutional determinants of FDI, finding that regulatory quality and economic freedom positively impacted FDI inflows, including a non-significant positive impact of corruption on FDI. The findings by Eggera and Winner (2005) showed a clear positive relationship between corruption and FDI, implying that corruption had a stimulating effect on FDI and also emphasizing that the positive impact of corruption on FDI suggests that the presence of excessive regulation and bureaucratic discretion by government officials shares the gains from FDI. The empirical work of Gasanova, Medvedev, and Komotskiy (2017) showed that corruption in countries in transition is not an obstacle but an attractive source for multinational companies, thus reflecting interesting results that contradict most of the large body of relevant literature. Indeed, there is reason to believe that the positive correlation between corruption and FDI in transition countries may be due to their specific transition problems that cannot be generalized (Woo 2010).

## **METHODOLOGY**

Seven Western Balkans countries' historical and secondary data were used to conduct this study, with the inflows of FDI into these countries serving as the dependent variable. In contrast, the Corruption Perception Index (CPI), Western Balkan Countries' Corruption Ranking (WBCR), Exchange Rate (EXG), and Inflation Rate (INF) are the independent explanatory variables.

The data for each variable of the model were obtained from the official websites of the relevant institutions: for FDI, the data were obtained from the International Monetary Fund; for CPI and WBCR, the data were obtained from the annual reports of the corruption index of Transparency International (were extracted from Transparency International annual corruption

index reports); while for EXG and INFL, the data were obtained from the World Bank. All the data collected for the dependent and independent variables is from 2012 to 2020. Because of the disparity in the values, all the data was expressed in the logarithmic form to bring them all on the same level<sup>1</sup>.

In the relevant research, the Ordinary Least Squares (OLS) technique was used to perform multiple regression analysis with the help of the Statistical Package for Social Sciences (SPSS) to test corruption's effect on foreign direct investment in countries of the Western Balkans. To determine the relationship between the dependent variable and the independent variables, the following multiple regression equation was used based on the model designed by Omodero (2019):

$$FDI = \beta_0 + \beta_1 CPI + \beta_2 WBCR + \beta_3 EXG + \beta_4 INFL + \varepsilon_j$$

Where,

FDI = Foreign Direct Investment

CPI = Corruption Perception Index

WBCR = Western Balkans Countries Corruption Ranking

EXG = Exchange Rate

INFL= Inflation Rate

B<sub>0</sub> = Regression Coefficient (Constant)

β<sub>1</sub>, β<sub>2</sub>, β<sub>3</sub>, β<sub>4</sub> = Regression Coefficientfor CPI, WBCR, EXG, INFL

ε<sub>j</sub> = Error Term

## FINDINGS AND DISCUSSIONS

### Model Suitability Test Results

To determine the relationship through regression analysis between the dependent variable of Foreign Direct Investment (FDI) and the variables related to the level of corruption as independent variables (CPI, WBCR, EXG, INFL), Table 1 shows the results issued by SPPS.

**Table 1: Regression Model Summary (Source: Author's computation 2022)**

Model Summary <sup>b</sup>					
Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	Durbin-Watson
1	.506 <sup>a</sup>	.256	.204	.41730	1.503
a. Predictors: (Constant), INFL, CPI, WBCR, EXG					
b. Dependent Variable: FDI					

<sup>1</sup>It is worth mentioning that in some of the annual periods there were data with negative values (cases when countries had a decrease in CPI and deflation, namely negative inflation) and that both relevant variables had to be previously adjusted in the case of their logarithm by finding the minimum of the values of the corresponding variable and setting this in absolute value and adding this value for one and then the same value being added for each individual annual value before adjustment and determining the natural logarithm of the obtained result.



The summary results from the regression analysis, namely the correlation coefficient ( $R=0.506$ ), suggest a medium-positive relationship of 50.6% between FDI as the dependent variable and the predicted independent variables (CPI, WBCR, EXG, and INFL). Similarly, the coefficient of determination ( $R\text{ Square}=.256$ ) shows that the independent variables account for only 25.6% of the total variance of FDI in Western Balkan countries, implying that the remaining 74.4 percent is due to other variations not accounted for by the investigated model. The derived Durbin-Watson statistic of 1.503 shows that the regression model's residuals are serially connected because the value is within the permitted range of 1.5.

## Analysis of Variance

In order to test the suitability of the regression model, the Analysis of Variance (ANOVA) was also conducted, which, according to the resulting data, shows the result of the F test of 4.977, implying that the independent variables (CPI, WBCR, EXG, and INFL) collectively influence the dependent variable FDI significantly and positively, with a significance level of 0.2% ( $p=0.002<0.05$ ), which suggests that, although corruption is not the only factor that affects FDI, the analytical model for assessing its impact has good suitability and, consequently, reliability in establishing relationships between the independent variables (CPI, WBCR, EXG, and INFL) and the dependent variable FDI. The results obtained through SPSS are presented in Table 2.

**Table 2: Analysis of Variance (ANOVA) (Source: Author's computation 2022)**

ANOVA <sup>a</sup>						
Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	3.467	4	.867	4.977	.002 <sup>b</sup>
	Residual	10.100	58	.174		
	Total	13.567	62			
a. Dependent Variable: FDI						
b. Predictors: (Constant), INFL, CPI, WBCR, EXG						

## Estimated Model

Table 3 tests the independent variables individually using the t-test to determine their impact on FDI in Western Balkan countries. The regression coefficients revealed that at the confidence level of 95%, CPI and WBCR have a negative effect ( $t=-1.880$ , namely  $t=-1.142$ ) and are statistically insignificant ( $p=0.065>0.05$ , namely  $p=0.258>0.05$ ). In contrast, EXG and INFL have a positive effect ( $t=2.629$ , namely  $t=2.037$ ) and are statistically significant ( $p=0.011<0.05$ , namely  $p=0.046<0.05$ ) on FDI in Western Balkan countries for the data of the period 2012-2020. The constant value of 9,835 shows that if the independent variables (CPI, WBCR, EXG, and INFL) were not part of the built model, the FDI of the Western Balkan countries would be weaker with little impact.

**Table 3: Regression of Coefficients (t-value and p-value) (Source: Author's computation 2022)**

Coefficients <sup>a</sup>						
Model		Unstandardized Coefficients		Standardized Coefficients	T	Sig.
		B	Std. Error	Beta		
1	(Constant)	9.835	1.045		9.415	.000
	LOG CPI	-.088	.047	-.214	-1.880	.065
	LOG WBCR	-.624	.546	-.131	-1.142	.258
	LOG EXG	.165	.063	.316	2.629	.011
	LOG INFL	.236	.116	.243	2.037	.046
a. Dependent Variable: LOG FDI						

The value of the t-test for the CPI shows that the CPI has an almost significant negative impact on FDI, implying that if the countries of the Western Balkans, as a single region, have an increase in the perception of the corruption index, this will have an impact on the decline of FDI. The theories of the negative effect of corruption on FDI are consistent with the authors' findings (Woo 2010; Alemu 2012, 387; Pupovic 2012; Brada, Drabek, and Perez 2012; Gasanova, Medvedev, and Komotskiy 2017, 2). The study, however, goes against the author's findings (Gutierrez 2015, 21), which indicated that corruption had a favorable and significant impact on FDI. According to the data in Table 3, the t-test value for WBCR indicates that the region's increased corruption has a negative but non-significant impact on foreign direct investment; if the Western Balkans as a whole experience a decline in FDI, this will likely be due to increased corruption, but not by a significant amount.

In line with this, the data presented in Table 3 shows that EXG and INFL have a significant positive impact on FDI, implying that if the Western Balkans countries as a single region have an increase in the exchange rate or/and an increase in the inflation rate, this will have a positive effect on FDI inflows. Considering that FDI inflows are one of the main elements that support the economic development of developing countries such as the countries of the Western Balkans, the data extracted and processed through SPSS shows that corruption harms the inflows of FDI, being one of the key indicators in restraining the growth and development of the respective countries, while the currency exchange rate and the inflation rate have a positive impact on FDI inflows.

Based on the results obtained so far, we can derive the equation for the built model of the effect of CPI, WBCR, EXG, and INFL on FDI for Western Balkan countries:

$$FDI = \beta_0 - 0.088CPI - 0.624WBCR + 0.165EXG + 0.236INFL + \varepsilon_j$$

For the purpose of estimating the regression equation, it is estimated that the stochastic error term of the model is zero. In coordination with this, based on the equation of the built model and based on the results so far, we can conclude that if EXG and INFL increase by one unit, FDI would increase by 0.165, namely 0.236, while if CPI and WBCR increase by one unit, FDI would decrease by 0.088, namely 0.624.

## CONCLUSION

Even though some research has supported the theory that corruption helps to increase the flow of FDI inflows, corruption, apart from being a negative phenomenon and sanctioned by legal acts, shows a low level of morals, ethics, and regression in economic development. The multiple linear regression analysis results showed that corruption in the Western Balkans countries negatively impacts FDI inflows and thus inhibits growth and economic development, while the exchange rate and inflation rate positively impact FDI inflows. However, the results showed that corruption and other variables included in the model account for only 25.6% of the impact on FDI inflows in Western Balkan countries. These results found that EXG and INFL are directly proportional, while CPI and WBCR are inversely proportional.

In the short term, corruption can help underdeveloped countries improve their economic situation. However, in the long term, this phenomenon is extremely harmful to society and the economic development of each country. Therefore, the governments of the Western Balkans countries, as developing countries, must be committed and, through regional cooperation, develop harmonized policies with the European Union (EU) to combat corruption and informality, two widespread and extremely widespread challenging phenomena. This is because the reduction in corruption will directly impact the attraction of foreign investors and, as a result, the increase in FDI inflows.

No other potential elements are considered in this research besides the variables included in the model and may impact FDI inflows in the Western Balkans countries.

Therefore, we recommend future researchers look into the variables that significantly affect the attraction of FDI inflows, such as governance indicators like GDP, the opening of free trade, the size of the market, political stability, regulatory quality, the rule of law, accountability, government effectiveness, the balance of payments, FDI outflows, and other variables in their model in future studies. Future researchers can investigate the aspect of FDI inflows for this region by analyzing each country separately and researching the specific beneficiary sectors of FDI. A good opportunity is to analyze the region in terms of the period before and now during the pandemic crisis, considering the level of corruption according to official data. This is because FDI inflows have decreased globally in recent years, owing to the global pandemic Covid-19 and the continuously rising inflation rate, both of which have slowed economic growth and are influencing the corresponding growth to be negative. Due to the significance of FDI inflows, Western Balkans countries should seriously consider mutual collaboration and take action to control the pandemic and inflationary crises most efficiently. The governments of the Western Balkan countries should work to maintain the inflation rate in balance or stabilize the fluctuations of the exchange rate to prevent the negative effects of FDI inflows, as the rate of inflation and the exchange rate has a positive and statistically significant impact on FDI.

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# POLICY OF RAISING THE CAPACITY OF LOCAL SELF-GOVERNMENTS FOR MANAGEMENT OF EMERGENCIES

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**Abstract:** Local self-governments (LSGs) cannot effectively manage emergencies. To overcome this problem, it is necessary to find action policies that would facilitate the increase of capacities of LSGs in such situations. The starting point for defining the policy was collecting data on the current abilities and capacities of LSGs in AP Vojvodina. The research covered 40% of the total number of LSGs and more than 64% of the population in the AP of Vojvodina. A combined open-ended survey questionnaire was constructed for data collection. The data was collected in field conditions through online procedures, direct sending of written surveys, and direct discussion of project implementation leaders. The statistical analysis of data identified that the legal aspect of LSGs and emergencies was not harmonized with other institutional documents at the level of LSGs. Most LSGs had serious difficulties in managing emergencies, especially civil protection. The platform is envisaged to facilitate raising the prevention capacity of LSGs by integrating all relevant information to provide early warnings and indications for implementing corresponding organizational, technical, and economic measures to deal with emergencies.

**Keywords:** Law; Security; Emergencies; Prevention Capacity; Serbia; Knowledge Management; Business Intelligence Systems

## INTRODUCTION

Local self-governments (LSG) represent an important element in the functioning of the state in crises and emergencies. They ensure the implementation of all decisions and create existential conditions for the population. In times of emergency when the coronavirus threatens the life of the nation, several segments are in a position to be threatened, such as public health, functional democracy, the rule of law, the protection of basic human rights and freedoms, as well as the possibility of introducing regimes that not only disturb the balance between branches of government but can also cause irreversible damage (Stefanovska 2021, 53). In such a situation at the LSG level, finding action policies to manage emergencies is important. It is necessary to implement different policies to enable the functioning of economic activities (Karović, Domazet, Ješić 2022, 22).

Raising the capacity of LSGs through effective emergency management policies in practice requires different capabilities of LSGs. In this sense, the various capacities of LSGs necessary for successful action in emergencies are analyzed and explained. Emphasis is placed on the current state of the LSG, its readiness in the organization's context, and the effectiveness of actions for various emergencies.

The paper proposes policies and specific solutions to increase the capacity of LSG for successful response in the prevention and management of emergencies. The proposed solutions were based on analyzed characteristic cases in the Autonomous Province (AP) of Vojvodina in the Republic of Serbia. The policy envisages a platform that would integrate all relevant information for LSGs, facilitate the building of the prevention capacity of each LSG and correlate all information to issue recommendations and early warnings in case of emergencies.

## METHODOLOGY

The research was conducted in the autonomous province (AP) of Vojvodina (Republic of Serbia) at the level of LSGs. The AP of Vojvodina is an autonomous province of the citizens who live in it within the Republic of Serbia. It covers an area of 21,506 km<sup>2</sup> with 1,931,809 inhabitants (census 2011, 21.56% of the total population of Serbia). On the territory of Vojvodina, there are 45 municipalities and cities, as units of local self-government, distributed in seven districts, with headquarters in the cities of Subotica, Zrenjanin, Kikinda, Pančevo, Sombor, Novi Sad, and Sremska Mitrovica. The province borders Hungary to the north, Romania to the east, Croatia to the west, and Bosnia and Herzegovina (Republika Srpska) to the southwest. The southern border is largely formed by the rivers Danube and Sava. The largest city in the province is Novi Sad, which is also the administrative center of Vojvodina. Other larger cities (over 50,000 inhabitants) are Subotica, Zrenjanin, and Pancevo (AP of Vojvodina, official web page). It covers 40% of the total number of LSGs and more than 64% of the population in the AP of Vojvodina. A combined open-ended survey questionnaire was constructed for data collection. The data included the current situation at the level of LSGs, key activities carried out by LSGs regarding the prevention of emergencies, the equipment of LSGs with modern IT tools, training and staffing of personnel dealing with protection and rescue operations in emergencies, the quality of protection and rescue plans in emergencies and the existence of procedures for acting in different conditions of emergencies.

The data was collected in field conditions through online procedures, direct sending of written surveys, and direct discussion of project implementation leaders. It is important to emphasize that respondents were agile and responsible in providing data. They understood and supported the importance of such an important problem and showed interest in solving such complex and serious issues.

Data processing in the context of solving problems and raising the capacity of LSGs combined with the need to look at the current capacity of LSGs and the basic problems in the functioning of LSGs to manage emergencies. The data also looked at the basic elements and shortcomings of LSGs in the sphere of continuous action, development, and improvement of local LSGs' capacity building in managing emergencies. The analysis was comprehensive, and based on that, by cross-referencing different data, the current state of LSGs was derived regarding the ability to act in emergencies.

Many suggestions were made in light of the current state of affairs and operational issues to increase local management's capacity for effective response to emergencies. Concrete measures are aimed at organizational elements, IT support, risk assessment, responding to risks, preventive forms, and establishing clear emergency action procedures.

Data collection in the manner mentioned above was only possible because, in the current situation of the Covid-19 pandemic crisis, no other form was available. Nevertheless, it should be emphasized that the constructed survey questionnaire of the combined type provided the necessary data to create a picture of the situation in LSGs in the area of the AP of Vojvodina. Responses were received from emergency management officials and are considered fully relevant.

## RESULTS

Data collected through a survey questionnaire are organized and presented in four units providing an insight into:

1. Existing capacities of LSGs for the prevention of emergencies.
2. Key activities of LSGs regarding the prevention of emergencies.
3. Content (forms) of emergency prevention and degree of risk management in LSGs.
4. Plans for building the capacity for the prevention of emergencies in LSGs.

Results are presented to indicate the level of prevention readiness of each LSG and present the spread of prevention capacities in Vojvodina regions.

### Existing Capacities of LSGs for Prevention of Emergencies

Existing capacities of LSGs at the level of Vojvodina province are estimated through the evaluation of the requirements set, as summarized in Table 1. Most LSGs meet most of the requirements, and the weakest point is the use of IT and data in prevention activities. Only half of the LSGs keep the database on emergencies and related damages and plan to use IT and data in prevention.

All LSGs in Vojvodina analyzed their current situation at the local level and identified types of emergencies that would affect the area of their LSG. Realistic assessments of the scale of certain emergencies were performed in most LSGs (94%). Even 89% of LSGs reported having qualified personnel for emergency planning, organized work, and specified detailed activities in case of emergencies.

**Table 1: Capacities of LSGs (Source: Authors' research)**

Capacities of local self-governments (LSGs)	Percentage of LSGs (%)
Analysed current situation at the level of LSG regarding the possibility of emergency situations:	100.00%
Identified types of emergency situations that would affect the area of LSG	100.00%
Carried out realistic assessments of the scale of certain emergency situations at the level of the LSG	94.44%
LSGs have qualified personnel for emergency planning	88.89%
Work is organized and detailed activities in emergency situations are specified at the level of LSG	88.89%
Planned use of information technology and data as a preventive form of emergency situations	55.56%
Existence of database on emergency situations and damage caused by emergency situations in LSG	50.00%

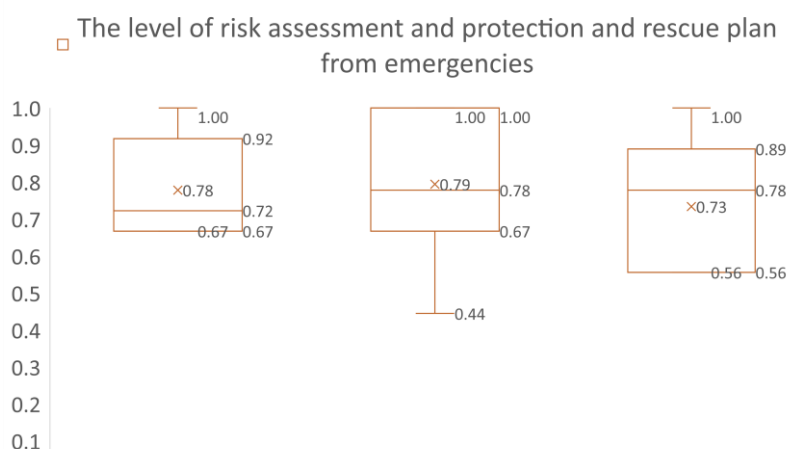
## Key Activities of LSGs for Prevention of Emergencies

The level of management and degree of preparedness for emergencies is evaluated through assessment of the following activities: (i) risk assessment and protection/rescue plans, (ii) compliance of documents with the legal framework, and (iii) planned activities based on results obtained from the assessment of effects of emergencies.

**Table 2: Risk Assessment and Protection/Rescue Plans (Source: Authors' research)**

The level of risk assessment and protection and rescue plan from emergencies	Percentage of LSG (%)
Economic enterprises are involved in the activities of preventive measures of emergency situations	100%
Protection and Rescue Plan is well defined with all risks identified?	94%
Protection and Rescue Plan provides for the evacuation of the population in case of disasters	89%
Transport capacities at the LSG ensure the transfer of public office holders to temporary places in case of disasters:	83%
Sufficient attention is paid to management of emergency situations in LSG	78%
Places of relocation of public office holders are at the LSG level clearly defined in case of disasters:	78%
Effects of climate change and corresponding economic consequences are assessed at the level of LSG?	67%
Assessments have been made on telecommunication system threats in the area of LSG	56%
Data on effects of KOVID-19 have been processed at the LSG	50%

The risk assessment activities and the level of development of protection and rescue plans are summarized in Table 2, showing the high percentage of LSGs meeting most of the requirements.



**Figure 1: The Level of Risk Assessment and Development of Protection and Rescue Plans Summarised for Three Regions of Vojvodina (Source: Authors' research)**

When presenting the summarized score, including all requirements as a function of LSGs within regions (Figure 1), it can be seen that half of the LSGs meet at least 72% of requirements.

However, there are still LSGs that require more engagement and work on raising the capacity in this segment. Full compliance and harmonization of the legal framework of emergencies with other institutional documents is achieved in 61% of considered LSGs.

LSGs will use the assessment of the effects of emergencies for revision and improvements of Protection and Rescue plans (72%), projection of development (32%), and allocation of financial help to the most vulnerable (22%).

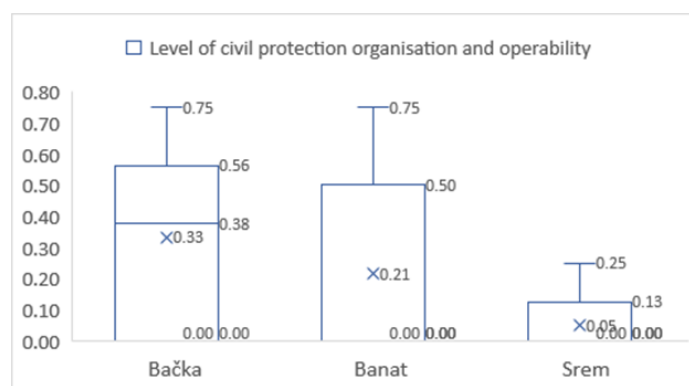
### Content (Forms) of Emergencies Prevention and Degree of Risk Management

Forms and content of prevention of emergencies are considered through the following categories: (1) achieved level of civil protection organization and operability and (2) defined forms of prevention and management of highest risks emergencies caused by identified realistic sources of threats for the specific LSG. Table 3 illustrates a very low civil protection and operability level in LSGs in Vojvodina province. No existing civil protection units are equipped according to defined related equipment and means.

**Table 3: Level of Civil Protection Organization and Operability (Source: Authors' research)**

Level of civil protection organisation and operability	Percentage of LSG (%)
There is a Plan for the use of civil protection units at the level of LSG and a clearly established command system for such units	33%
Level of civil protection is sufficiently developed at the level of LSG to be able to act effectively in emergency situations	28%
There are sufficient financial resources to finance civil protection units	22%
Civil protection units are equipped according to the defined related equipment and means	0%

Figure 3 shows an extremely low level of civil protection organization and operability in one Vojvodina region (Srem). There is a huge spread of readiness levels in the other two regions, with no LSG meeting all requirements.



**Figure 3: Level of Civil Protection Organization and Operability (Source: Authors' research)**

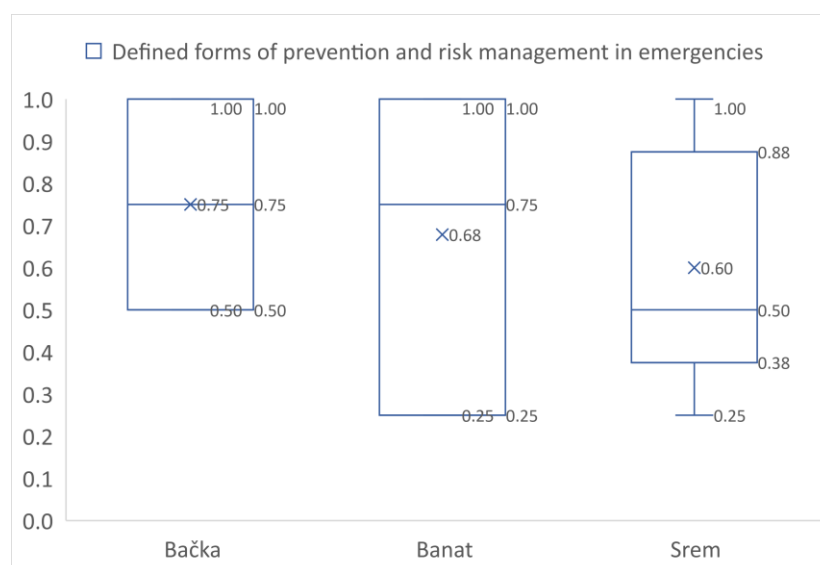


Table 4 shows that almost all LSGs (94%) have a developed system for warning the population of a possible danger that could lead to declaring an emergency. A high percentage of LSGs (83%) have a clear vision of action in such a situation. The procedure for determining the state of consequences of emergencies exists only in 56% of LSGs. In comparison, only 39% of LSGs have clearly defined criteria for prioritizing financial assistance to vulnerable populations.

**Table 4: Defined Forms of Prevention and Risk Management in Emergencies (Source: Authors' research)**

Defined forms of prevention and risk management in emergencies	Percentage of LSG (%)
There is a developed system for warning the population of a possible danger that may cause the declaration of an emergency situation	94%
According to the risk assessment, there is a clear vision of action at the LSG level in such emergency situation	83%
Clearly defined procedure for determining the state of consequences of emergency situations	56%
Clearly defined criteria for the priority of financial assistance to vulnerable populations as a result of emergency situations	39%

The summarized score expressing the achieved definition of forms for prevention and risk management 0 (none) to 1 (fully met requirements) is shown in Figure 4 for three Vojvodina regions indicating a widespread achieved degree of fulfilled requirements.



**Figure 4: Defined Forms of Prevention and Management of Highest Risks Emergencies (Source: Authors' research)**

Floods and extreme weather conditions are reported in most LSGs as those with major economic consequences.

## Building and Strengthening Capacities for Emergencies

To build and strengthen capacities for the prevention of emergencies in LSGs, it is important to (1) understand the importance of local initiatives within LSGs for risk reduction and emergency prevention, (2) understand requirements and necessary activities for capacity strengthening, (3) understand reasons for lacking local initiatives for strengthening capacities of LSG and (4) assess existing activities for capacity strengthening. The local community has the best understanding of regions' conditions and, thus, in any LSG. Their empowerment will enable anticipation of possible emergencies and help in the decision-making process and risk reduction.

Inquiry into the importance of local initiatives for strengthening the capacities of LSGs has shown that almost 95% of LSGs consider them important or very important. The most important initiatives include active city headquarters for risk monitoring, training, rescue exercises, equipment restoration in case of fire and floods, and connecting neighboring municipalities in emergencies. The insufficient financial resources, lack of information, and insufficient interest and proactivity of people can explain the reason for the non-existence of local initiatives in most LSGs. There is a high degree of understanding of requirements and required activities for capacity strengthening by LSGs in the region, as represented in Table 5.

**Table 5: Understanding Requirements and Necessary Activities for Capacity Strengthening**  
(Source: Authors' research)

Understanding requirements and necessary activities for capacity strengthening	Percentage of LSGs (%)
Considered necessary to organise training of all entities at the LSG level for prevention of emergency situations	94.44%
Considered important in prevention of emergency situations to have a clear vision of the concept of emergency prevention for all elected and appointed people in LSG	94.44%
Considered necessary at the level of LSG to have binding instructions for the collection and storage of data related to the effects of the actions of unfortunate events and the effects of the measures taken	88.89%
Considered necessary to have an electronic database where such data will be stored as well as to classify data types	88.89%
Considered necessary to provide continuous education of employees in LSG in the field of emergency situations, especially unpredictable ones:	88.89%
Considered necessary to have a list of tasks in the form of a checklist in the initial period of mitigating emergency situations, to monitor the work process of LSG bodies	83.33%
Considered necessary to separate data that will be specially standardized	72.22%
Considered necessary at the level of LSG to prepare instructions for dealing with emergency situations: Note: These instructions for various types of hazards have already been prepared by the Department for Security, the Association for Security, and others.	61.11%

The system for effective monitoring of the status of implementing preventive measures to reduce the consequences of emergencies in LSGs already exists in more than 50% of LSGs.

The importance of human (creativity, education, civil participation, science, culture), institutional (local regulations, good governance, local public policies), and technological factors (big data, open data, networking, digitalization) for strengthening the capacity of LSGs in the prevention of emergencies were also assessed by LSGs.

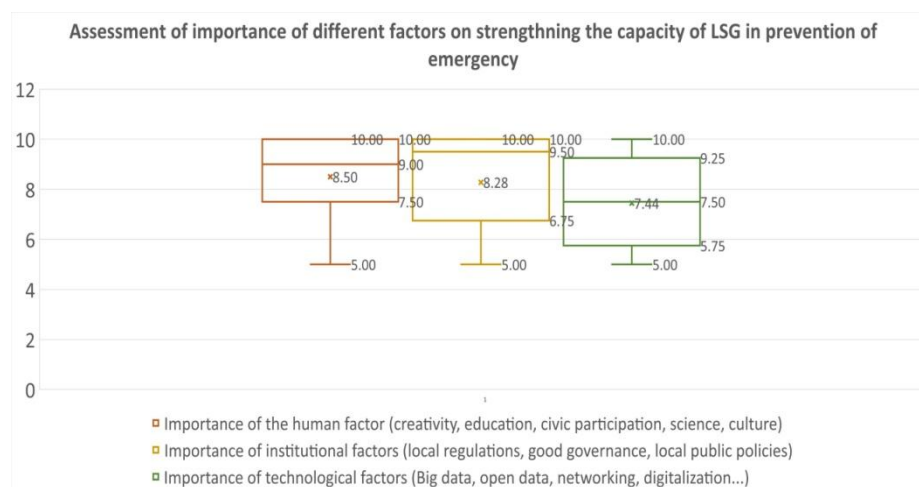
Results are in Figure 4 (0 - no importance to 10 - maximal level of importance). All factors are considered important, with the average mark between 7.5 and 8.5 giving a slight advantage to human and institutional factors.

## DISCUSSION

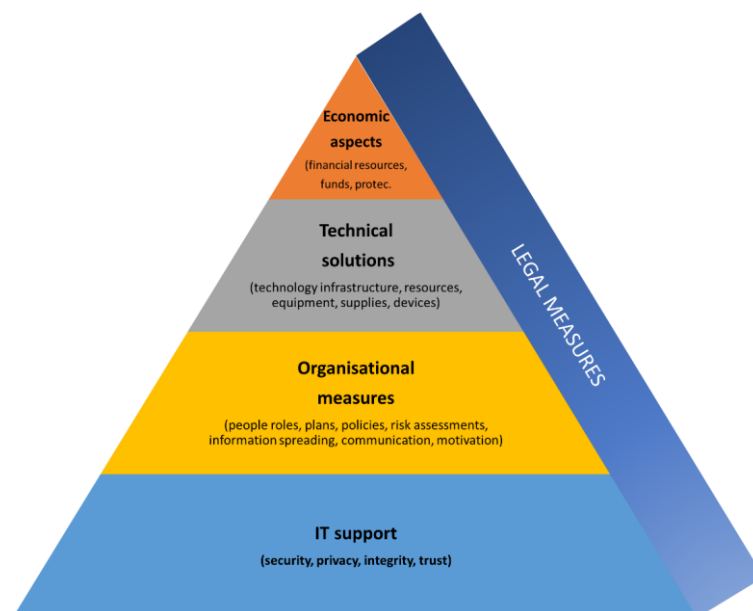
The data collected in this research gave us a good understanding of the current prevention capacities of LSGs in AP Vojvodina. They indicated big variations in the level of prevention readiness among them in some categories.

There is a need to consider a series of measures that could help meet identified requirements and build and raise the preventive security capacities of all LSGs. Thus, the whole region minimizes potential risks for undesired events. Considered measures for raising the security capacity of LSGs are organized into three categories: (1) organizational measures, (2) technical measures/solutions, and (3) economic measures/aspects. Their implementation requires a systematic approach and IT support to manage emergencies (Figure 5).

Allocation of financial resources for raising the capacity of LSGs following the assessed situation and priorities comes after a confirmed analysis of the situation and with the necessary IT support (security, privacy, integrity, trust) in the form of equipment and process integration, determination of the necessary organizational measures (people roles, plans, policies, risk assessments, information spreading, communication, motivation) and technical solutions (technology infrastructure, resources, equipment, supplies, devices) in order to optimize the budget for emergency management. Every stage in an IT-supported system for security capacity building must be supported with legal measures.



**Figure 4: Assessment of Importance of Different Factors on Strengthening the Capacity of LSG In Prevention of Emergencies (Source: Authors' research)**

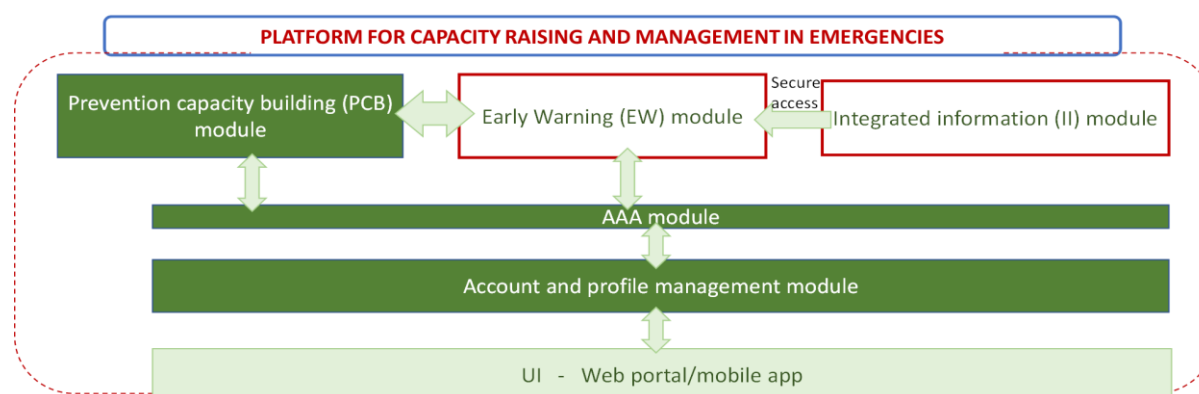


**Figure 5: Structure of IT-Supported System for Security Capacity Building**  
(Source: Authors' research)

## The Platform for Capacity Raising and Management

Efficient application of measures requires a platform that connects and integrates technology, people, stakeholders, and procedures into an operable and efficient system to facilitate operability inside and among different LSGs, provide good communication with higher instances and set the basis for capacity raising in emergencies.

The top-level component diagram of the proposed platform for capacity raising and management in emergencies is illustrated in Figure 6.



**Figure 6: Platform for Capacity Raising in Emergencies - Basic Components** (Source: Authors' research)

It encompasses three building modules, namely (1) Prevention Capacity Building (PCB) module, (2) Early Warning (EW) module, and (3) Integrated Information (II) module. These modules are considered necessary for capacity raising and management, i.e., monitoring, evaluating prevention capacity, risk assessment, geo-spatial information visualization, and timely coordination and the reaction of local authorities in response to emergencies. Such a platform must integrate heterogeneous data and ensure interoperability among services and technologies (Pereira et al. 2022) to support prevention and mitigation activities.

### ***Information Integration (II) Module***

The role of the II module is to collect and integrate all information relevant to the LSG from all available resources, which can include open city data, IoT and smart objects' data, existing smart management systems' data, citizens' reports, etc., providing information on weather conditions, pollution, water levels, traffic, transport, energy consumption, other incidents and providing in such a way an overall picture of LSG operation and possibly facilitating it.

### ***Early Warning (EW) Module***

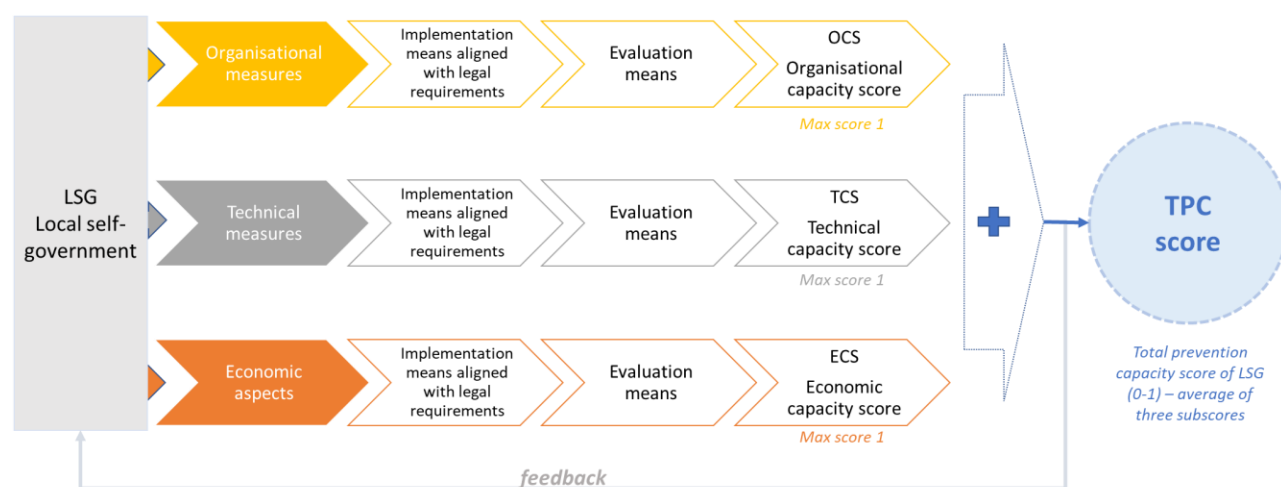
The early warning module should actively monitor the real-time operation of LSG provided by the II model and correlate data with specific vulnerabilities identified within the PCB module, perform risk assessment, and accordingly issue early warnings for any risks and problems that can lead to emergencies. This module requires access to all the data and knowledge stored within the PCB module, including geo-spatial data, so all the relevant early warning information can be geo-spatially visualized.

The EW and II modules and their functions and interactions have already been described by Pereira et al. (2022) as essential parts of a potential smart city platform. In interaction with the PCB module, these two modules should ensure predictive and preventive information-based management and decision-making based on using artificial intelligence in big data analysis, detecting any correlations, patterns, or discrepancies that can help predict and conduct preventive measures of affected LSGs. This paper focuses on the PCB and the account and profile management (APM) modules.

### ***Prevention Capacity Building (PCB) Module***

PCB module should provide monitoring, assessment, and scoring of each LSG in terms of their organizational (OCS), technical (TCS), and economic capacity (ECS) for the prevention of emergencies. These scores are planned to take the values from 0-1 and to contribute equally to the total prevention capacity (TPC) score for each LSG (Figure 7), indicating the total level of LSG readiness also represented in a range from 0-1. PCB module should monitor the implementation of each measure, facilitate the effective estimation of preventive capacities of each LSG, and support capacity strengthening in the domain of prevention, planning, testing, estimation, and

maintenance to avoid or mitigate the consequences of emergencies. It should provide reminders through feedback mechanisms on any tasks/activities pending within the LSG.



**Figure 7: Prevention Capacity Building Module Components for Assessment of Organizational, Technical, and Economic Capacities and the Total Capacity Score (TPC) of LSGs**  
(Source: Authors' research)

TPC score for each LSG can be presented through several levels of readiness such as: (1) highly resilient (0.8-1), (2) above average resilient (0.6-0.79) with room for improvement in a specific area, (3) average resilience (0.4-0.59) facing a higher level of stress and emphasizing the need to take actions in more than one area and (4) non-resilient (below 0.39) requiring immediate action to reduce the impact of potential hazards.

Organizational measures in prevention activities of LSGs in case the risk of emergency increases include a series of actions that would be coordinated by the local authority as described in (Karovic, Rankov, Domazet, Ješić 2021) and summarized in Table 6.

Technical measures for preventing emergencies and raising security capacities will result from risk analysis and maps, identifying critical parameters and selecting required systems and equipment to provide physical support, developing emergency response plans, etc. The plan is required for the economic/financial support in prevention, mitigation, and response activities, including required roles, responsibilities, and action steps (Table 6).



**Table 6: Organizational, Technical, and Economic Measures to Increase Security Capacity**

(Source: Authors' research)

<b>Organizational Measures to Increase Security Capacity</b>	(1) dissemination of early warning notifications to all affected, (2) dissemination of risk maps including risky and vulnerable areas to all relevant stakeholders, (3) plans for protection and rescue evacuation, (4) risk assessment, (5) risk and vulnerability reduction through provision of specific recommendation to crucial public utility providers (6) preparation of resources, means and supplies, (7) human resources (clearly defined team structure, roles, and responsibilities, team for incident and process estimation, action plan and team for guiding and documenting) (8) education and training of personnel/human resources (can also be part of the non-emergency activity), (9) education and training of volunteers based on specific required skills, (10) informing citizens and visitors on any risks, (11) communication through available communication means.
<b>Technical Measures to Increase Security Capacity</b>	(1) real-time monitoring of critical parameters, (2) databases populated with both historical and current data, (3) maps with access to critical infrastructures, (4) maps of risks, previous hazards, and related consequences, (5) access to demographic data, etc. Technologies that can be used in preventing and mitigating disasters include: IoT, GIS, GPS, SATNAV, SATCOM, radio, TV, internet, mail, drones, robots, etc. Communication channels should enable different communications modes such as one to many, notifications based on geofencing etc.
<b>Economic Aspects of Security Capacity Building</b>	(1) involvement of economic enterprises, (2) assessment of economic consequences due to climate change, (3) financial resources for different purposes, (4) identifying priorities of financial assistance to vulnerable, (5) deriving economic policy measures to remedy consequences of emergencies. All stakeholders depend on services provided by public utility providers, and it is important to minimize any interruption and restore all vital services and functions asap.

### ***User Interface and Account and Profile Management***

The account and profile management module requires user registration and assignment of the profile/role. The platform would require secure registration for all groups of users through web and/or mobile applications. Users/stakeholders include platform administrators, government, public authorities, critical infrastructures command centers, emergency (first) responders, mobile network operators, citizens, visitors, etc. Engagement of the private sector in preventive activities is very important. The way to succeed is to provide them with integrated real-time information on security status at the local level.

The platform should include role-based access control, ensuring users can access the data defined by their role.

IT support in building prevention capacities and crisis management is inevitable. It offers numerous benefits but requires strong security and privacy measures in the system following GDPR imposing privacy and security by design concept and ensuring end-to-end security and trust in shared information (Bohli, Skarmeta, Moreno, García 2015). Implementation of incentive and reputation schemes can motivate the engagement of LSGs and any active stakeholder in activities leading to prevention capacity building and strengthening the resilience of the LSG.

### ***Data Storage and Management***

The platform must keep the acquired knowledge on emergencies to facilitate capacity raising and management. This refers to expert knowledge and models for the management of various hazards.

Historical data and information on previous hazards (from far and recent past events), damage caused, and lessons learned must be stored in the historical database. Current data stored in an operational system can come from various sources (Karovic, Rankov, Domazet, and

Ješić 2021) and in various formats, containing different content and context. It is recommendable to perform several data management operations (Stoyanovich et al. 2022).

Data classification can be based on content and context, putting the data into categories to be easily accessed, sorted, or stored. It facilitates access control and grouping of similar content. It supports confidentiality protecting sensitive data and the privacy of users as well as integrity, compliance, and availability.

Data separation uncouples data from its source and ensures the protection of the identities of individuals and organizations when integrating datasets.

Data standardization provides transforming and keeping data in a common format to facilitate data management and usability, improve analytics and data reliability, facilitate collaboration, and ensure consistency among different systems.

## CONCLUSION

Capacity raising and management in emergencies represents both a decision-making process and a derivation of various preventive solutions to reduce the risk of possible consequences of endangering the safety of the population, organizations, and society as a whole. Its implementation is also conditioned by different types of qualitative areas related to a specific type of emergency, primarily because each emergency is multidisciplinary. Capacity raising and management in emergencies include a large number of people, an organization, and an organizational form of effective action with efficient and effective use of means and methods needed to resolve the emergency, as well as the introduction of various measures for effective functioning in such conditions.

The paper identifies that the legal aspect of LSGs and emergencies is not harmonized with other institutional documents at the level of LSGs. This refers to adopting protection and rescue plans for different types of emergencies, the organizational structure of action in an emergency, and types of risks.

In most LSGs, there are serious difficulties in managing emergencies, especially when it comes to civil protection. It was established that many LSGs do not have a plan for using civil protection units, nor is there an organized command system for those units. This directly affects emergency management and its implementation as a practice in raising the capacity of LSGs to manage emergencies effectively.

The proposal of measures (legal, organizational, technical, and economic) for implementing preventive security measures in LSGs introduced in this paper implies that future research will be directed onto the field of measuring and assigning the prevention capacity scores to LSGs related to the level of implementation of proposed measures. That will enable estimation of the level of resilience of each LSG in case of emergency. That is seen as a part of the envisaged capacity-raising and management platform that will provide early warnings to all LSGs and relevant stakeholders that can be affected by the emergency. This will be realized by implementing responsible data management to meet privacy and security regulations.

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# THE ROLE OF REGIONAL HUMAN RIGHTS INSTITUTIONS IN TIMES OF ARMED CONFLICTS IN AFRICA

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**Abstract:** *Armed conflict is a perennial problem that has plagued Africa for decades, resulting in flagrant human rights abuse. The central problem this paper seeks to address is identifying the laws establishing institutions and agencies for protecting human rights in Africa and examining how well-adapted these institutions are to protect human rights in times of armed conflict in Africa. This research employs the doctrinal research method, which entails an examination of the relevant primary sources of the law as laid down in the statutes and treaties and interpreted by the courts as well as secondary source materials, including journal articles, reports, and other relevant sources materials. It is contended that though human rights institutions were not established with the goal of interventions in times of armed conflict to protect human rights, they can be adapted to meet this challenge to stem the tide of gross human rights violations during armed conflicts. The paper concludes by recommending the expansion in the practice of the mandate of these human rights institutions to accommodate mechanisms for the protection of human rights in times of armed conflicts.*

**Keywords:** *Armed Conflict; Humanitarian Law; Human Rights; African Charter; Law of Wars; Regional Institutions*

## INTRODUCTION

This paper examines the role of regional human rights institutions in times of armed conflict in Africa. This paper is borne out of the desire to address numerous human rights cases of abuse in Africa over time due to armed conflicts that have devastated the region. Over the years, Africa has been home to numerous conflicts from DR Congo, Liberia, Sierra Leone, Uganda, Rwanda, Libya, Egypt, Sudan, and Tunisia, to mention but a few. Most of the abuses in these conflicts have not been investigated, and the culprits were not punished. Where investigations were done and indictments issued, the culprits have not been handed in for trial. Even when trials are conducted, they are done by foreign courts. The affected states and citizens have always complained about the processes and the fact that the trials were not done in Africa, and punishments were not served in Africa too. This paper posits that these challenges will not be over until the human rights courts in Africa are empowered to deal with these abuses at the grass root level, as Africans will best appreciate the peculiar circumstances in the region.

## CONCEPTUAL FRAMEWORK

This part is devoted to conceptual definitions of key terms used in this paper. The term armed conflict has been variously defined. The concept of "armed conflict" is not defined in the conventions or protocols. However, it has been noted that "any difference arising between

states and leading to the intervention of members of the armed forces is an armed conflict", and an armed conflict exists whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups within a state (Pictet 1952, 1-29).

The Appeal Chamber of the International Criminal Tribunal for the former Yugoslavia defined it thus "an armed conflict exists whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state" (*The Prosecutor v. Dusko Tadic* 1997). There are two kinds of armed conflict - international and internal, and what we have in Africa falls under the second category.

Human rights law is the branch of public international law that assures us of all the rights and freedoms all human beings are entitled to. These rights are universal, interdependent, and interrelated. For every right, there is a duty to respect, protect and fulfill that right. The duty bearers are all states bound by human rights. These rights are based on customary international law, treaties, and soft laws. The Universal Declaration of Human Rights (UDHR 1948) provides civil, cultural, economic, political, and social rights. The UDHR is soft law, but it contains a binding interpretation of Articles 55 and 56 of the United Nations Charter, a treaty binding on all UN Member States. Some provisions of the UDHR have become customary international law and are binding on all states. Again, human rights are protected by regional treaties and institutions.<sup>1</sup>

International humanitarian law (IHL) has been defined as laws of armed conflicts or "the law of war" (Shaw 2008, 1167). From an international law perspective, IHL has been defined as the law that seeks to regulate the conduct of hostilities, "*Jus in Bello*" (Shaw 2008; Greenwood 2006, 783). It has also been defined as the law which applies once the decision to resort to force has been taken and fighting has started (Cassese 2008, 6). However, in an international human rights-focused study, it can broadly and legitimately be seen as a set of laws aiming to protect the individual's human rights during international or internal armed conflicts (Robertson and Merrills 1996, 310). The protection of the rights of individuals during an armed conflict bears a close relationship to the regime of international protection of Human Rights. In explaining the relationship between human rights law and humanitarian law, Roberts and Merrits (1996) contend that the former is the general law of which the latter forms a part. It is argued that human rights standards ideally should apply at all times and in all circumstances (Rehman and Ghosh 2008; Sassoli 2004) because the relationship between human rights norms and IHL can be seen in their natural complementary and considerate overlap, and humanitarian norms have contributed to the development of human rights law to a very large extent.

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<sup>1</sup> In Europe, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Protocols, and the European Social Charter; In Africa, the Banjul Charter on Human and Peoples Rights; In Americas the American Conventions on Human Rights (ACHR) and the Additional Protocol to the American Convention on Human Rights In the Area of Economic, Social and Cultural Rights (Protocol of San Salvador).



## HISTORICAL OVERVIEW

Archaeological findings, anthropological interpretations, and historical records indicate that people have engaged in armed conflicts since prehistoric times (Tadesse n.d.). Armed conflicts within states are political conflicts involving citizens fighting for internal change. Some are secessionist movements, generally spearheaded by a group of people, more often a minority within a community, who take up arms to fight to establish either an autonomous entity within an existing state or an entirely new and independent state of their own. Also, armed conflicts within states may involve a group of people who are armed and ready to fight to seize governmental power. Sometimes conflicts are matters of organized crime as opposed to politics.

Regular armies, militias, and armed civilians with a little discipline and ill-defined chains of command fight most armed conflicts. Another important feature in such conflicts is usually the collapse of the institutions of the state, especially the police and judiciary, with resulting paralysis of governance, a breakdown of law and order, and general banditry and chaos (Project Ploughshares 1998). Fighting in most conflicts in Africa occurs not on well-defined battlefields but in and around communities and is often characterized by personalized acts of violence (Project Ploughshares 1998).

Home-grown weapons, such as machetes and spears, maim many in armed conflicts, but imported machine guns, grenades, mortars, and armored vehicles kill many more. The weapons are acquired by warring parties, either through hard currency purchases or through what is known as “parallel financing”.<sup>2</sup> There is usually some level of external involvement, whether in the form of arms supply to the warring factions, provisions of military advisers, or direct combat support for a particular side, as was noted in the case of the Democratic Republic of Congo, Liberia, and Sierra Leone.

## CAUSES OF ARMED CONFLICTS IN AFRICA

Africa is caught in a wave of conflicts, many intractable, which have led to wanton abuse of human rights. The causes of these conflicts are many. According to Deng and Zartman (1991), for instance, Africa’s conflicts arise from problems basic to all populations, the trigs and pulls of different identities, the differential distribution of resources and access to power, and competing definitions of what is right, fair, and just. There have also been conflicts arising from boundary and territorial disputes; civil wars and conflicts ignited by external forces: conflicts sparked by succession movements as in Angola, Western Sahara, and Biafra of former Eastern Nigeria: and political as well as ideological conflicts (Zartman 1984, 103).

African nationalist leaders inherited the structures of violence from the departing colonial authorities; and employed them to consolidate their power. State-citizen relations became fundamentally conflictual and tenuous. The abuse of human rights during military or autocratic rule in parts of the continent can be understood from the standpoint that when Africa’s leaders assumed state power, there were no standardized procedures for winning and exercising political power: about what is a legitimate purpose and what is not; for defining the limits of state action; and of the place of human rights, especially the rights of the individual in

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<sup>2</sup> Parallel financing involves the sale or barter goods such as diamonds, oil, timber and coffee.

the political regime. The lack of acceptable parameters in state-society relations left a vacuum and ambiguity between the two spheres (Nwachukwu and Obiozor 1996, 6).

A state system that does not provide for the security and welfare of its citizens cannot expect legitimacy. According to Almond (Almond 1993), the post-colonial African state cannot deliver on the "social contract" with its citizens. Rather, it justifies its citizens' rights as the exigencies of national unity and security. In some cases, ruling groups may resort to violence to prolong their rule and maintain opportunities for corruption (Murshed and Tadjoeeddin 2009).

There is also the problem of greed and grievance and the roles of violent Islamism and the global war on terror (Lake and Rothchild 1996). This is more so in times of conflict, during which the social order is disrupted, and national security takes precedence at the expense of people's rights. It is further contended that these claims by states if misdirected, could lead to serious violations of human rights and processes associated with the assertion and protection of human rights and to the total breakdown of the social order (Almond 1993). Some conditions that increase the probability of war include the inability of governments to provide basic good governance and protection for their populations (United Nations, Report of the Secretary-General on the Work of the Organization, Supplement No. 1 (A/54/1) 1999; Rotfeld 1999). Countries afflicted by war typically also suffer sharp inequalities among social groups. Rather than poverty, that seems to be a critical factor, although developing countries have been far more likely to be involved in armed conflicts than rich ones. Whether based on ethnicity, religion is reflected in unequal access to political power that too often forecloses paths to peaceful change (Seul 1999).

Ethnic and religious animosities, mass violations of human and minority rights, and ethnic cleansing resulting from extreme forms of nationalism propagated by hate media exacerbate conflict. The relative ease with which arms are trafficked worldwide, particularly in countries and regions affected by civil wars, is also a contributory factor. It has been noted that at least seven million small arms are in West Africa, where they have killed more than two million people since 1990, more than 70 percent of them women and children (United Nations 1999). State weakness can create the conditions for violent conflict. Political institutions that cannot manage differing group interests peacefully, provide adequate guarantees of group protection, or accommodate growing demands for political participation can fracture societies (Mansfield and Snyder 2007, 161-76). Colonialism and liberation struggles in Africa have left various legacies, including divisive and militarized politics and fierce struggles for power and land (Wyk 2007). It is important to note that irrespective of the causes of armed conflict, the bottom line is the tragic human suffering associated with the outbreak of conflict.

## EFFECTS OF ARMED CONFLICT

Where wars erupt, suffering and hardship invariably follow. Conflict is the breeding ground for mass human rights violations, including unlawful killings, torture, forced displacement (Akujobi and Awhefeada 2021), and starvation. In global conflicts, governments and armed groups routinely attack civilians and commit war crimes and terrible human rights abuses (Armed Conflict n.d.). At least a dozen African countries have been affected by armed conflict over the last few years despite numerous peace and international mediation processes.

In all of them, civilians suffered human rights abuses, and the most affected were women, children, and older people (Amnesty International n.d.).

About two-thirds of the world's forcibly uprooted people are displaced within their countries. They are known as internally displaced people (IDPs). In the first half of the year 2020, for example, it is reported by the Internal Displacement Monitoring Centre (IDMC) that there are over fourteen million displaced persons across one hundred and twenty-seven countries (Internal Displacement 2020: Mid-Year Update 2020). According to the figures released by the Geneva-based Internal Displacement Monitoring Centre (IDMC), there were 28.8 million IDPs worldwide in 2012 (United Nations 2015). The 28.8 million internally displaced civilians recorded in the IDMC report included more than 6.5 million newly displaced. The conflicts in Syria and the Democratic Republic of the Congo were responsible for around half of the new displacements. An estimated 500,000 people fled their homes in both Sudan and India. The largest regional increase in the number of IDPs in 2012 was in the Middle East and North Africa; the region with the largest total number of IDPs was sub-Saharan Africa, which hosted 10.4 million (United Nations 2015). Hundreds of thousands of people at risk in war areas, such as Southern Sudan, the Democratic Republic of the Congo, Burundi, Angola, and Sierra Leone, mostly internally displaced, cannot be reached by humanitarian agencies. Where such access is possible, it is often under very dangerous conditions. In Burundi, for example, in the last quarter of 1999 alone, 30,000 new refugees fled to the United Republic of Tanzania. That country's total number of Burundian refugees is now about 300,000 (Ogata 2000).

Civilians face various threats to their persons and property during armed conflicts. In the worst cases against humanity or even genocide, such targeting includes killing, rape, torture, looting, and destroying homes. It has been particularly common in internal interethnic conflicts, such as Bosnia, Darfur, and Rwanda (Docherty 2011). The Rwandan genocide of 1994 consisted of attacks against civilians, with the exploitation of ethnic identities and allegiances degenerating into hate-filled propaganda (United Nations 1998). Children have been obliged to join warring parties to avoid starvation, protection, or under pressure from adults (United Nations 1998). The brutal doctrinarism of child soldiers leaves them with emotional and psychological scars. Children were made to witness massacres and commit atrocities. In Cambodia, Mozambique, and Sudan, child soldiers were "socialized" into violence by subjecting them to periods of terror and physical abuse (Wallensteen and Sollenberg 1998). In Sierra Leone, abducted children were forced to witness or take part in the torture and execution of their relatives. This made them outcasts in their villages and forced them to cling to rebel groups. Another effective tactic rebels use to spread terror is the execution of the village chief by the youngest boy. Refugees are the symptoms of wars and communal violence motivated by ethnic or religious hatred, persecution, and intolerance (Wallensteen and Sollenberg 1998).

The former human rights officer of the UN Office of the High Commissioner for Human Rights identified the following common trends of violations in situations of armed conflict:

1. Abuses by government forces and allied militia under international humanitarian law. These include failure to discriminate between civilian and military targets, violence towards non-combatants, pillaging, and intentional displacement of civilian populations.

2. Arbitrary arrests and detentions by policy, national security, and military intelligence, as well as abductions by rebel groups with *de facto* administrative control over certain geographical areas and assume responsibility for law and order in those areas.
3. Sexual and gender-based violence is mainly directed toward displaced women vulnerable to attacks when traveling outside the camps for income-generating activities.
4. Torture and ill-treatment by government security agencies and rebel groups.
5. Harassment of IDPs by militias, rebel groups, and government forces.
6. The inability of IDPs and civilians to conduct livelihood activities due to the high risk of and lack of protection.
7. Lack of accountability for human rights violations.
8. Poor administration of justice due to lack of resources and political will.
9. Unreasonable restrictions on the freedoms of expression, opinion, and assembly. Government security forces allegedly harass, arbitrarily detain and mistreat human rights defenders and community leaders who express opinions perceived as opposed to the government (Syed 2011).

## LEGAL FRAMEWORK

### Common Article 3

Common Article 3 is the human rights guarantees in times of internal conflict or civil war, which all the parties to the conflict should obey. It lists all the fundamental guarantees to be observed by the parties to the conflict. The slight difficulty observed in applying this mini-treaty and Additional Protocol II is determining when each becomes operative. It is important to note that common Article 3 has a lower threshold than Additional Protocol II, but they all protect victims of internal conflict. Applying common Article 3 in internal conflict requires two conditions to be fulfilled. There must be two parties to the conflict and the intensity of the conflict. This is important to distinguish common Article 3 conflict from violent situations with a lower threshold. This means that each conflict situation must be analyzed based on the stated criteria to determine the regime of law that will apply. Common Article 3 prohibits violence to life and person, particularly murder, mutilation, cruel treatment, and torture. Taking hostages; outrages personal dignity, particularly humiliating and degrading treatment. The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees recognized as independent by civilized peoples. It also provides that the wounded and the sick shall be collected and cared for and also makes provisions for the services of an impartial humanitarian body such as the ICRC (common Article 3(1)(a)-(d) and (2)). It is accepted that the provisions of common Article 3 reflect customary international law.

The ICTY (*The Prosecutor v Dusko Tadic* 1997) held *inter alia* that:

The emergence of international rules governing internal strife has occurred at two different levels: at the level of customary law and at that of treaty law. Two bodies of rules have thus crystallized, which are by no means conflicting or inconsistent, but mutually support and supplement

each other. Indeed, the interplay between these two sets of rules is such that some treaty rules have gradually become part of customary law. This holds true for common Article 3 of the 1949 Geneva Conventions.

The ICJ also reiterated the above assertion in the *Nicaragua* case when it stated:

Article 3, which is common to all four Geneva Conventions of 12 August 1949, defines certain rules to be applied in the armed conflicts of a non-international character. There is no doubt that, in the event of international armed conflicts, these rules also constitute a minimum yardstick, in addition to the more elaborate rules which are also to apply to international conflicts; and they are rules which, in the Court's opinion, reflect what the Court in 1949 called 'elementary considerations of humanity (...)' (*Nicaragua v. United States of America* 1986).

Since all parties are bound by common Article 3 regardless of whether the affected state has ratified the Geneva Conventions, this paper's stance is that it does.

### Customary International Humanitarian Law

In 2005, the ICRC published a study on customary IHL (Henckaerts 2005), which has helped greatly clarify the scope of protection in non-international armed conflict. The study also recognizes that the rule that applies to any conflict that meets the threshold of Article 3 is customary international humanitarian law. The study has shown that 148 out of 161 rules contained in the study apply to all conflicts, whether international or internal. The study under the caption of 'Fundamental Guarantees' (Rules 87-105); reiterates that the provisions of common Article 3 reflect customary law. The rules are specifically for protecting civilians and persons *hors de combat*. The rules of customary IHL are identified as part of the norms applicable in internal conflicts that meet the threshold of common Article 3.

### Overlap of Protocol II and Common Article 3

Protocol II (1977)<sup>3</sup> contains provisions or rules applicable during the internal armed conflict that has exceeded the threshold of common Article 3 (1949) conflict. This does not indicate a state of incompatibility between the laws. IHL and HR are developed separately and differ in content and context when one considers their field of application. Human right regulates the conduct of states concerning their citizens and applies both in times of war and peace. IHL as *lex specialis* is best suited and applicable in times of conflict. It controls how parties to a conflict behave and ensures that anyone under the enemy's control has their rights upheld. This is where the relationship between IHL and HR is most evident. Those in the hands of the enemy are citizens of a state, and their rights must be protected.

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<sup>3</sup> Additional Protocol to the Geneva Convention of 12 August 1949, and Relative to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977

Although some rights can be derogated from in times of emergency (such as freedom of movement, speech, and association), such as armed conflict situations, the international monitoring mechanisms and procedures of human rights are well developed to supplement the law's effects of war or IHL. The development of human rights can help improve the works of humanitarian organizations like the ICRC in times of armed conflict. Having noted that IHL and HR have different origins and scope of application, they must complement each other in times of armed conflict to form a synergy for better protection of the civilians and those *hors de combat*. It has been noted that freedom of speech and movement is specifically a human rights issue. Treating prisoners of war is within the scope of humanitarian law. However, the right to life, freedom from torture, and inhuman or degrading treatment are protected by human rights and IHL regimes (Bothe 2004), and this is where the synergy comes from.

## **Domestic Legislations**

Domestic criminal laws of states also constitute a source of law in times of internal conflict. States in line with treaty obligations<sup>4</sup> are encouraged to review their local laws to bring them in line with the provisions of the law of war. Only when this is done can states effectively try those indicted of committing war crimes, crimes against humanity, and genocide.

## **The African Charter on Human and Peoples Right (ACHPR 1986)**

The African Charter on Human and Peoples Rights is a comprehensive legislation covering a range of individual and collective rights to be enjoyed by Africans (Articles 1-29). Although the Charter did not mention war or conflict, its provisions can be applied for protecting lives and resources in times of conflict in Africa as human rights apply at all times. Most of the crises in Africa have been linked to the environment and natural resources, and the Charter contains very copious provisions. The Charter also made provisions for establishing the African Commission on Human and Peoples Rights (Article 30). The Charter also defines the Commission's functions (Article 45).

## **The African Commission on Human and People's Rights**

Africans must develop new ways of conflict management. Indeed, artificial societies created by colonialism in which different nationalities, ethnic groups, and tribes were forcibly yoked together cannot be wielded in peaceful nation-states that can be stable and prosperous. The problem is not peculiarly African; deeply segmented societies exist virtually everywhere. The presence of many ethnic groups in a country does not necessarily bring about internal stability, animosity, and conflicts. What makes the difference between stable plural societies and unstable ones is usually the responsibility of the leadership to the fact of multinationality (Oyeniyi 2011). Given the competition of multiple identities within most African boundaries (Adejumobi 2001), realizing human rights on the continent entailed, at the minimum, guarantees of social justice or equitable ground rules for access to the benefits of membership in, protection by, or immunities

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<sup>4</sup> Article 1 common to the four Geneva Convention of 1949.



from the state as such it is very much bound up with the construction of both the state and citizenship on the continent.

In its broad outlines, realizing human rights in Africa is an economic and political project of eliminating poverty, disease, and their adverse consequences and liberating the citizens and inhabitants of the continent to realize their fullest potential (United Nations General Assembly 2000). This project requires states with constitutional governments in which people are guaranteed the fullest rights of participation in determining their collective and individual fates, i.e., states in which governments are accountable both to their people and to norms and institutions that effectively prevent, restrain and redress arbitrariness. These objectives, which may seem quite modest, have proved rather onerous to attain in an African continent with more than its fair share of human rights violations, conflict, underdevelopment, natural disasters, and humanitarian catastrophes. However, the extreme atrocities observed during conflicts in Africa have evoked universal indignation and the impetus to intervene to halt the carnage.

### **The African Commission on Human and Peoples' Rights and Conflict Resolution**

The African Commission on Human and Peoples' Rights is a body set up under the African Charter on Human and Peoples' Rights (1986), to which all African states are now party. What is worth considering is the extent to which the African Commission sees conflicts as part of its human rights mandate. The substantive provisions of the Charter appear to place conflict within the context of human rights. Article 23(1) states that "all peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by the Organization of African Unity shall govern relations between states".<sup>5</sup> Article 23(2), affirmed by the Commission's interpretation, interestingly suggests that it is expected that most conflicts will come from inside the state rather than being external threats.<sup>6</sup>

Including peoples' rights within the Charter also offers the potential for preventing conflicts. It is important to note that conflicts are perceived to be part of the mandate of the Commission. The Commission has various methods for identifying potential conflicts (Murray 1999). One way is through the individual communication procedure under Article 58 of the Charter, which speaks expressly of "a series of serious or massive violations". The importance of this procedure not only for highlighting abuses but also for potentially dealing with possible conflicts declares:

The prevalence of internal conflicts in Africa, which are accompanied by massive human rights violations, suggests the need for strengthening

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<sup>5</sup> The rest of Article 23 reads: "For the purpose of strengthening peace, solidarity and friendly relations, States Parties to the present Charter shall ensure that: (a) any individual enjoying the right to asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter; (b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

<sup>6</sup> In this respect as part of their reporting obligation, they should inform the Commission of "Statutory and Administrative measures designed to restrain refugees allowed into the country under Article 12 from engaging in subversive activities against their country of origin or any other State party to the Charter. Prohibition of subversive or terrorist activities against other States parties to this Charter being organized or launched from their territories".

human rights mechanisms for non-state groups to voice their grievances regarding systematic discrimination and violations of human rights remains critical. Recourse to a legitimate international mechanism where such grievances can be aired and pressures brought to bear upon the offending government to change its behavior will be important in protecting human rights in Africa (OAU/IPA 1998).<sup>7</sup>

Other methods employed by the African Commission on Human and Peoples' Rights for preventing conflicts in Africa include on-site missions, the assignment of commissioners to particular states for promotional purposes,<sup>8</sup> the inter-state communication procedure, the reporting mechanism,<sup>9</sup> interim measures,<sup>10</sup> the holding of the extraordinary session<sup>11</sup> and through the work of its special Rapporteurs.<sup>12</sup> There is also the early warning mechanism<sup>13</sup>. Under this mechanism, there is a "situation room" at the secretariat, which collects general information from, for example, news agencies and the internet and transmits this raw data to the staff at the conflict division in the secretariat. These data are to be collected and analyzed. It is crucial to note that continuous monitoring of a state's human rights situation will provide indicators of potential conflicts.

### **The African Court on Human and Peoples' Rights and Conflict Resolution**

Norms prescribing state conduct are not meaningful unless anchored in functioning and effective institutions. Thus, the African Court on Human and Peoples' Rights is a mechanism for protecting and promoting Human Rights. Generally, human rights abuses during conflicts in Africa have increased substantially. What is the African Court doing to address the human rights abuses occasioned by conflicts in Africa? Are there better ways the African Court can resolve the conflicts resulting in these human rights abuses? It is observed that the Court has both contentious and conciliatory jurisdiction.<sup>14</sup> Article 4 of the African Charter also provides for advisory jurisdiction through which it issues advisory opinions on "any legal matter relating to the charter or any other relevant human rights instruments".

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<sup>7</sup> Report of the OAU/IPA, Task Force on Peacemaking and Peacekeeping in Africa, New York, March 1998, at 17-18.

<sup>8</sup> Geographical Distribution of Countries for Promotional Activities, DOC/OS/36e (XXIII)

<sup>9</sup> States are required to submit reports every two years under Article 62 of the Charter on the measures they have taken to implement the Charter in national law.

<sup>10</sup> As See Rule 111-The provision can arguably be used as indicators to enable action to be taken against potential conflict at an early stage.

<sup>11</sup> Rule 3

<sup>12</sup> Special Rapporteurs on Summary, Arbitrary and Extra-Judicial Executions, Special Rapporteurs on Prison and Other Conditions of Detention, Special Rapporteurs on Women's Rights. All of them are Commissioners.

<sup>13</sup> Mechanism for Urgent Response to Human Rights Emergencies under Article 58 of the African Charter on Human and Peoples' Rights, Doc/OS/52 (XXIV)

<sup>14</sup> Article 3 Protocol to the African Charter on Human and Peoples Rights on the Establishment of an African Court on Human and Peoples' Rights by the Assembly of Heads of State and Government of the Organisation of African Unity, Conference of Ministers/ Attorneys General on the Establishment of an African Court on Human and Peoples' Rights, OAU/LEG/MIN/AFCHPR/PROT. (1) Rev 2 (1997) hereinafter referred to as Protocol.

The paper highlights some of the decisions of the African Court in its protection functions. Article 9 of the Protocol that sets up the African Court on Human and Peoples' Rights follows the Court to attempt the "amicable settlement" of disputes. In the case of *African Commission and Human and Peoples' Rights v. Great Socialist People's Libyan Arab Jamahiriya* (2011), the Court received an application from the African Commission on Human and Peoples' Rights instituting proceedings against the Great Socialist Peoples' Libyan Arab Jamahiriya, for serious and massive violations of human rights guaranteed under the African Charter on human and people rights. The indiscriminate and excessive use of force and lethal weapons against peaceful protesters violated human rights and international humanitarian law, contributing to the loss of human life and the destruction of property.

The Court decided to make an order for the provisional measure.<sup>15</sup> According to the Court, it appears from the application that there exists a situation of extreme gravity and urgency, as well as a risk of irreparable harm to persons who are the subject of the application. The Court unanimously ordered the Great Socialist People's Libyan Arab Jamahiriya to immediately refrain from any physical integrity of persons, which could be a breach of the Charter's provisions or other international human rights instruments to which it is a party. It also ordered the Great Socialist People's Libyan Arab Jamahiriya to report to the Court within fifteen days of receipt of the order on the measures taken to implement it. The Court's order on this matter is a very welcome development as the human rights of citizens in a conflict situation.

However, a very disturbing feature of the provisions of the protocol to the African Charter on Human and Peoples Rights on the Establishment of an African Court on Human and Peoples' Rights is that for the Court to hear a case brought directly by an individual against a state party, there must be compliance with, *inter alia*, Article 5(3) and Article 34(6) of the Protocol.

Article 5(3) provides that: "The Court may entitle relevant non-governmental organizations with observer status before the Commission and individuals to institute cases directly before it, in accordance with Article 34(6) of this protocol".<sup>16</sup>

The effect of the preceding two provisions is that direct access to the Court by an individual is subject to the deposit by the respondent state of a special declaration authorizing such a case to be brought before the Court (*Michelot Yogogombaye v. Senegal* 2009).

## CONCLUSION

This paper considered the conceptual framework and the legal regimes in times of internal conflict and concluded that the relevant regimes of IHL and HR overlap to form a synergy. Common Article 3 of the Geneva Conventions contains a human rights provision to be respected and obeyed by the parties to the conflict and has also attained customary law status.

<sup>15</sup> Under Article 27 (2) of the Protocol and Rule 51 (1) of the Rules of the Court, the Court is empowered to order provisional measures *proprio motu* "in cases of extreme gravity and urgency and when necessary to avoid irreparable harm to persons" and to which it deems necessary to adopt in the interest of the parties or of justice".

<sup>16</sup> Article 34(6) of the Protocol provides that: at the time of ratification of this Protocol or anytime thereafter, the state shall make a declaration accepting the competence of the Court to receive cases under Article 5(3) of this Protocol. The Court shall not receive any petition under Article 5(3) involving a state party which has not made such a declaration.

The IHL study on Customary IHL has helped to clarify the uncertainties about the relevant rules applicable in any conflict. The paper notes that states must respect customary rules irrespective of ratification. The paper also noted the need for states to review domestic legislation to enable them to try breaches arising from armed conflicts. The paper recommends that the African countries immediately draft relevant rules for the African Court of Human Rights in addition to funding which is very crucial for the survival of the Court.

It is strongly recommended that individuals be granted direct access to the African Court on Human and Peoples' Rights so that those violating the human rights of people in situations of armed conflict can be promptly punished. Also, in that case, those that take part in armed conflict will learn to comply with the rules of international humanitarian laws and human rights laws.

Also, the African Court on Human and Peoples' Rights has a conciliatory jurisdiction. In its conciliatory jurisdiction, the Court should take urgent steps to resolve disputes before they degenerate into a state where parties take up arms against each other. It should be noted that this conciliatory jurisdiction of the Court reflects the African value, which emphasizes conciliation and compromise. Unlike the European system, the winner takes it all and promotes continued fraternity between the parties. Today, it is sad to note that all we hear in Africa are rumors of war. Therefore, the challenge to African countries is for the existing human rights institutions in Africa to use the early warning mechanism, establish methods of conciliation to humanize warfare, and protect the victims of armed conflicts.

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# HUMANITARIAN DIPLOMACY STRATEGY FOR SYRIAN REFUGEES AND ITS EFFECT ON JORDAN'S FOREIGN POLICY

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**Abstract:** *This research examined the effect of Jordan's humanitarian diplomacy strategy for Syrian refugees on its foreign policy and attempted to determine whether the strategy is financially sustainable. Humanitarian diplomacy is persuading decision-makers and leaders worldwide to act at all times and in all circumstances in the best interest of vulnerable populations by completely respecting fundamental humanitarian principles. Jordan has allowed many Syrian refugees to cross over and settle in Jordan. This study used a qualitative systematic literature review and quantitative data from the UNHCR to determine the effect of the strategy on Jordan's foreign policy and whether the strategy could be sustained. The findings showed that Jordan's stature in terms of its foreign policy has grown, leading to bilateral agreements and participation in international negotiations. However, its humanitarian strategy may not be sustainable with the current level of funding. The funding from foreign countries and international organizations has been insufficient to support the growing number of Syrian refugees in Jordan. The literature on this topic is limited, and comprehensive quantitative research is recommended to determine the future effect of the strategy on health care and education for Syrian refugees in Jordan.*

**Keywords:** *Jordan; Humanitarian Diplomacy; Foreign Policy; Syrian Refugees*

## INTRODUCTION

Over the years, governments have been the main stakeholders responsible for providing humanitarian aid to people in times of crisis, internally or externally, at home or in other countries. The state's activities in providing international humanitarian aid are intrinsically connected to national, regional, and international politics (El-Taraboulsi, McCarthy, Metcalfe-Hough, and Willits-King 2016, 1). Whereas countries like the United States and European countries have previously dominated humanitarian actions because of their soft power resources and political influence, many other states have become global humanitarian diplomats following their rapid economic growth and increased international emergencies. For instance, in the Middle East, Turkey and Jordan have demonstrated humanitarian diplomacy in their actions to support refugees from countries such as Iraq, Palestine, and Syria during crises in those countries.

While Syria and Jordan have had a close relationship in the past and even fought side-by-side against Israel, their relationship was strained by Syria's decision in 1970 to support Palestine Liberation Organization guerillas engaged in resistance against Israel, who were occupying Jordanian lands and not Syrian lands (al-Weshah 2014, 199). Today, Jordan has become one of the countries with the largest number of refugees from Syria (Lenner and Schmelter 2016, 122). As of 2012, approximately one million Syrians had fled to Jordan, and

671,551 Syrian refugees were registered with the United Nations High Commissioner for Refugees (UNHCR) (Farah 2020, 130). This hosting of many Syrian refugees, following earlier hostings of refugees from Iraq and Palestine, has positioned Jordan as a humanitarian, diplomatic state in the international arena.

Humanitarian diplomacy has been defined as persuading decision-makers and leaders worldwide to act at all times and in all circumstances in the best interest of vulnerable populations and to completely respect fundamental humanitarian principles (De Lauri 2018, 1). Europe has locked its borders against Syrian and other refugees from the Middle East. However, despite the negative repercussions of this action, Jordan has kept its borders open for refugees from Syria. Whereas some studies have found that the influx of immigrants in a country may bring capital to and increase the purchasing power of local economies, thus offsetting negative effects on the domestic labor force, other studies have found that there is a negative effect of immigration on the employment and wages of the less experienced and unskilled local workers of the host country (Fallah, Krafft, and Wahba 2019, 206). This raises the question of the sustainability of humanitarian diplomacy for Syrian refugees in Jordan.

According to the International Federation of Red Cross and Red Crescent Societies, engaging in humanitarian diplomacy should not be a country's choice; instead, it is a responsibility flowing from the privileges societies enjoy (IFRC 2022, 1). The main functions of humanitarian diplomacy are engaging in negotiation, advocacy, and communication and making formal agreements.

This paper aims to explore how Jordan's humanitarian diplomacy strategy for Syrian refugees has affected its foreign policy and determine whether the strategy is sustainable in the future.

## RESEARCH PROBLEM

The increased emergencies from natural disasters and other environmental threats have resulted in the need for humanitarian aid in many parts of the world. One of the challenges that policymakers have faced is making humanitarian aid accessible to people in areas experiencing complex emergencies and conflicts. Therefore, diplomacy with other nations, especially those experiencing extreme insecurity and political unrest, has become vital. Through these humanitarian diplomacy efforts, nations can promote their foreign policies and improve their relations with other states.

However, scholars and practitioners have questioned the neutrality of humanitarianism since some countries are perceived to promote their political interests in their humanitarian negotiations and diplomatic activities even as they provide access to humanitarian support (De Lauri 2018, 2). This has been exercised through soft power by the most influential nations that possess power resources (Huda and Ismail 2022, 467), enhancing their foreign policies. It is known that Turkey, as one of the countries with a high number of refugees, has successfully used its humanitarian diplomacy to promote its foreign policy and affirm its global image as a growing Middle Eastern power. However, there is a lack of knowledge about how Jordan's foreign policy strategy, in association with its humanitarian diplomacy efforts for Syrian

refugees, has affected its image globally and whether its humanitarian strategy is sustainable. This paper fills that knowledge gap.

## **Research Question**

How has Jordan's humanitarian diplomacy strategy for Syrian refugees affected its foreign policy, and is its approach sustainable?

## **Justification**

Policymakers rely on well-supported evidence to make national and international decisions. During the Iraqi conflict and later Syrian conflict, Jordan was one of the countries that opened up its borders and allowed refugees to stream into the country, with the partial intention of promoting its foreign policy and being able to negotiate in the international arena for development. The humanitarian diplomacy approach might have positively influenced its foreign policy in terms of helping other nations learn. The sustainability of Jordan's humanitarian diplomacy strategy has not been widely researched, and this research intends to add knowledge and increase the understanding of the sustainability of the approach.

## **LITERATURE REVIEW**

This section provides a literature review of some studies on Jordan's humanitarian diplomacy strategy.

## **Concept of Humanitarian Diplomacy**

In recent years, disasters such as wars and environmental challenges caused by global warming have threatened human existence. Ongoing conflicts in countries such as Syria, Palestine, and Somalia have led to a rising number of refugees who have fled to other countries, resulting in the growing need for humanitarian aid to assist vulnerable populations. Countries have used the situations orchestrated by such natural emergencies to develop humanitarian diplomacy for different countries' foreign policies. Humanitarian diplomacy began in the 2000s, intending to act at all times in the best interests of vulnerable populations in line with fundamental humanitarian principles. Diplomacy refers to representing an individual polity in relation to another polity, and humanitarianism refers to advocating for and assisting a needy population (De Lauri 2018, 2). Elise Rousseau and Achille Sommo Pende (2020, 254) have defined humanitarian diplomacy as all negotiation activities employed by different actors with organizations, governments, and public figures to help intervene in an emergency threatening human existence. The negotiation activities are meant to persuade policymakers and leaders to act in a way that promotes fundamental human rights.

## **Jordan's Approach to Humanitarian Diplomacy**

Gerasimos Tsourapas (2019, 464-465) argued that the humanitarian diplomacy employed by Jordan is based on a back-scratching strategy that depends on bargains since the position of Jordan in the Middle East is not strategic enough to give the country much influence in the area. Jordan tends to cooperate with Syria to use its exit corridors for importing goods. Any action that might strain the relationship between Syria and Jordan would be detrimental to Jordan. The author argued that although Jordan hosts many Syrian refugees, it is not geopolitically important compared to Europe or Turkey. In this regard, it can be argued that a country's geopolitical influence plays a significant role in shaping its attitude toward humanitarian diplomacy. Those countries that have a strong geopolitical influence or those countries that are strategically placed to benefit the country experiencing a crisis tend to "call the tune" of the relationship. For instance, because of its geopolitical position, Turkey had employed "hard power" (Huda and Ismail 2022, 466) for a long time in handling the Syrian refugee crisis. However, in the 2000s, it reverted to soft power and public diplomacy to further its foreign policy agenda (Huda and Ismail 2022, 469). Soft power refers to using a country's culture, values, and policy resources to achieve a desired national outcome.

In contrast, hard power refers to coercion and threats to achieve a desired outcome. The case of Turkey's humanitarian diplomacy confirmed that a country's geopolitical position significantly affects its humanitarian diplomacy approach. In contrast, Jordan's position may not favor a hard power strategy for humanitarian diplomacy but favor a cooperative approach.

Moreover, cooperation among countries is enhanced by effective communication. Having clear and proper communication during the refugee crisis has been found to play a critical role in humanitarian diplomacy (Cevik and Sevin 2017, 1). With proper communication, a country can engage with target audiences to build mutually beneficial relationships and engage in meaningful interactions (Cevik and Sevin 2017, 6). To this end, Jordan has communicated its stand clearly regarding the Syrian crisis. Unlike other Arab states that took sides in the conflict, Jordan's goal has always been to remain neutral. Jordan has therefore defined the crisis as a crisis of internal affairs within Syria and has thus not wanted to intervene in it (al-Weshah 2014, 197). Not only was the message of being neutral regarding the Syrian crisis communicated verbally by Jordan's government, but Jordan also showed a commitment to fostering a strong relationship with Syria through its open-border policy (Achilli 2015, 3; Murshidi et al. 2013, 206). The decision to open borders so Syrian refugees could enter Jordan was applauded internationally for its humanitarian stance. This action has maintained close relationships between Jordan and Syria as trading partners in exchanging military firearms (al-Weshah 2014, 205), thus promoting Jordan's foreign policy and image internationally.

It has been pointed out that Jordan's humanitarian diplomacy strategy for Syrian refugees has paid off for Jordan because the country has maintained a close relationship with Syria. The strategy has also gained international attention and attracted investments from European and other international organizations in Jordan. For instance, al-Weshah (2014, 205) claimed that support from NGOs and foreign countries supported the refugee influx into Jordan and enhanced Jordan's economic growth through employment opportunities. The Norwegian Refugee Council is one of the NGOs that have boasted about how Jordan's strategy has



provided new jobs for many Jordanians and expanded the labor market to accommodate Syrians (Farah 2020, 133). Therefore, the closer working relationship between the Jordanian government and foreign countries and NGOs to promote humanitarianism has given Jordan a positive image internationally, thus promoting Jordan's foreign policy. Although the humanitarian diplomacy employed by Jordan has cemented its relationship with NGOs and Syria, it is not known whether the approach is sustainable in the long run.

## METHODOLOGY

This research used qualitative and quantitative methodologies (Hammarberg, Kirkman, and de Lacey 2016, 498; Gupta and Gupta 2022, 11) to determine the effect of Jordan's humanitarian diplomacy and sustainability. Qualitative research allows the researcher to examine people's experiences through in-depth research methods, such as interviews, surveys, content analyses, and observations. It also studies people in their natural settings to determine how the contexts of their lives, such as cultural, social, economic, and physical contexts, shape their experiences and behaviors (Hennink, Hutter, and Bailey 2020, 10; Liamputtong and Ezzy 2005, 14). The study also used quantitative research, a methodology involving the collecting and analyzing of numerical data (Apuke 2017, 40–47; Williams 2007, 66).

### Research Design

The research used data (Kothari 2004, 95) through a systematic literature review to examine the relevant studies that found positive effects of Jordan's humanitarian diplomacy strategy for Syrian refugees on its foreign policy. A systematic literature review thoroughly examines information from previous research articles to understand the phenomenon under study (Zawacki-Richter et al. 2020, 3). In addition, a descriptive analysis was performed to examine the correlation between Syrian refugees in Jordan and the funding of their needs to determine the sustainability of Jordan's humanitarian diplomacy regarding Syrian refugees.

### Data Collection Procedure

Relevant articles were selected through an advanced search on Google Scholar using keywords such as "Jordan humanitarian", "Jordan", "Jordan diplomacy", and "Syrian refugees in Jordan". The articles for inclusion had to be available as full text and contain the keywords in the title. Additionally, the article included must have been published within five years. Therefore, articles not available as full text or published for more than five years were excluded.

Quantitative data about the number of Syrian refugees from 2012 to 2022, the funding received, and the resulting funding deficit was obtained from the UNHCR Operational Data Portal (2022) and UNHCR Humanitarian Data Exchange for Jordan (2022).

## Data Analysis

Qualitative data were analyzed by reading the full text of each article to determine whether the study contained content about the positive side of Jordan's humanitarian diplomacy strategy. The literature review also explored indicators of the potential unsustainability of humanitarian diplomacy in Jordan. The quantitative data were analyzed using SPSS version 25 to determine the relationship between the funding trends and the growing number of Syrian refugees. Using the regression model, these data showed how much the number of Syrian refugees influenced funding decisions. The findings are presented in tables and figures.

## FINDINGS AND DISCUSSION

The qualitative analysis showed that Jordan's humanitarian diplomacy for Syrian refugees gave Jordan the reputation of being a humanitarian advocate internationally. As a result, many global expatriate humanitarians were attracted to Jordan to work on humanitarian issues, leading to increased investments and employment for Jordanians (Farah 2020, 130). Furthermore, integrating Syrian refugees into the labor market of Jordan was considered a humanitarian act of advocacy for equal rights and opportunities for everyone residing in Jordan. The Jordanians and the Syrian refugees have been treated almost equally, though Syrian workers accepted slightly lower wages (Farah 2020, 137). This increased the status of Jordan in the eyes of the international community. Zeynep Sahin Mencutek and Ayat J. Nashwan (2021, 621) described how in 2016, Jordan offered a very advanced plan, the Jordan Compact, for allowing Syrian refugees to enter the Jordanian labor market through internationalization at Supporting Syria and the Region Conference (The London Conference). The government of Jordan committed to introducing the right to employment for Syrian refugees if the international community would accept the financial and trade-related demands. Therefore, the EU worked closely with Jordan to ensure that Syrian refugees were employed to help overcome the challenges of resettlement (Panizzon 2018, 244). In this regard, humanitarian diplomacy enabled Jordan to participate in international financial and trade agreement negotiations. Moreover, Jordan's humanitarian diplomacy aligned with national and regional laws (al-Qaralleh 2022, 2). The country acted to uphold the provisions of regional laws, thereby improving its image in the region.

Furthermore, the policy to grant Syrian refugees the freedom to live among Jordanians increased its agricultural output and land use while improving the livelihoods of the country's population. A study by Sattam al-Shogoor et al. (2022, 372) on the influx of Syrian refugees into the Irbid district in Northwestern Jordan found increased urbanization and agricultural efforts in the area. Not only did the granting of freedom of association among Syrian refugees and Jordanians promote the country's productivity for the benefit of everyone, but it also promoted Jordan's foreign policy internationally so that Jordan's actions became a positive influence on other countries in terms of being an example of how to enhance the peaceful coexistence of groups of people in crisis.

Whereas Jordan's humanitarian diplomacy strategy has increased the country's positive brand image internationally, Jordanians are facing social, economic, political, and institutional strains because of it (Alougili 2019, 83). Syrian refugees in Jordan threaten political and socioeconomic stability and internal and national security, making the humanitarian diplomacy approach unsustainable for Jordanians. Moreover, it may be that this threat to internal security is making Jordan an insecure country for foreign investments by other countries. While Jordan is part of a coalition that targets eradicating terrorist groups and combating radical extremist ideologies in the region, its internal and external security may be threatened by its open-border policy for Syrian refugees fleeing war (Alougili 2019, 90–91). The possibility that terrorist groups may be smuggled across Jordan's borders in the guise of refugees may make the country appear risky, thereby blocking serious engagements with foreign countries that may wish to invest in Jordan to facilitate mutual economic growth. Trying to sustain contributions to Syrian refugees in the country may be challenging in the absence of some growth in economic activities that would support the provision of services, including the employment of refugees on an equal basis with Jordanian employees.

Research by Mitra Naseh et al. (2020, 3) found several discrepancies based on the interviews conducted in Jordan with Syrian refugees and service providers on their expectations for humanitarian services and the actual services received. For instance, the refugees stated that the Jordanian government was providing shelter for them but that the humanitarian organizations working in Jordan did not provide any required services. Several complaints revolved around limited funding for health care, education, financial assistance, and training programs based on available financial resources, as well as a lack of assistance with rent and the insufficient availability of electricity and water. These complaints could lead to negative perceptions of Jordan's humanitarian diplomacy in the international community; if the country cannot uphold the spirit of diplomacy, which maintains that humanitarian diplomacy is a responsibility and not a choice, then its image may be tarnished (IFRC 2022, 1). Irresponsibility for providing all of the essential services the refugees need could endanger Jordan's humanitarian diplomacy strategy, and it should be reviewed to enhance the country's foreign policy.

The growing tension between Syrian refugees and Jordanians in the Jordanian labor market also pointed out a possibly unsustainable humanitarian approach. Many Jordanians, especially unskilled workers, perceived that Syrian refugees were taking over their jobs. Because Jordan had established a system whereby Syrian refugees had become perfect substitutes in the labor market, some Jordanians lost their jobs (Dougherty 2021, 33). The Jordanian government's efforts to allow Syrian refugees to live freely and the growing mistrust between Jordanians and Syrian refugees about access to resources, including employment, may have made the government's strategy unsustainable in the long run. A proper plan for addressing this issue needs to be put into place. Divisions between the two groups are likely to dominate their social interactions and may contribute to a negative image of Jordan in the future.

## Descriptive Statistics

A descriptive analysis was conducted with SPSS version 25 to determine the relationship between the external funding of refugee needs and the number of Syrian refugees in Jordan regarding the long-run sustainability of Jordan's humanitarian diplomacy strategy for Syrian refugees. Figure 1 shows the number of Syrian refugees in Jordan from 2012 to 2022.

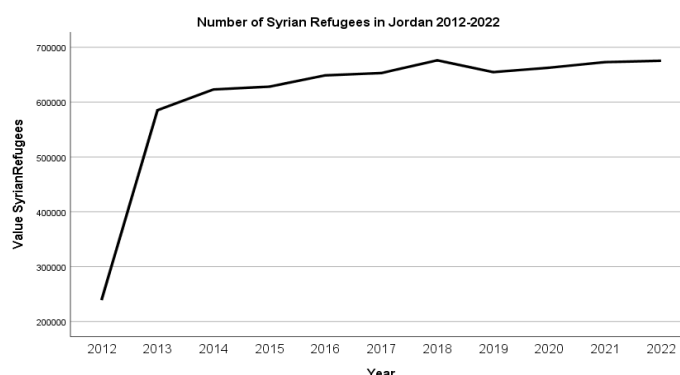


Figure 1: Number of Syrian refugees in Jordan (Source: Author's research 2022)

Figure 1 shows that although the number of Syrian refugees in Jordan has continued to increase, the rate of increase has fallen, as illustrated by the relatively flatter curve. The UNHCR recorded the numbers and thus did not include unregistered Syrian or non-Syrian refugees. The fact that Syrian refugees have been welcomed in Jordan has given Jordan a positive image as a country that is ensuring the protection of a vulnerable population, which has enhanced the country's foreign policy. The findings confirmed al-Qaralleh's (2022) claim that Jordan's humanitarian effort to accept refugees has been in line with local and regional laws and the guidelines of international organizations, further enhancing Jordan's foreign policy.

However, despite the high number of Syrian refugees in Jordan, the funding received by Jordan in support of the refugees is relatively low. Figure 2 shows the funding received and the total funding required.

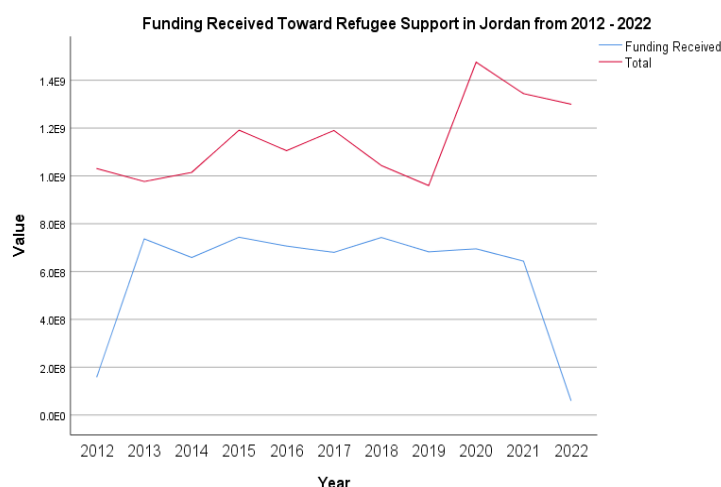


Figure 2: Funding Received for Refugee Support (Source: Author's research 2022)

Figure 2 shows that the funds received to finance the needs of refugees in Jordan are relatively low. This suggests that the Jordanian government has to finance the deficit using the country's limited resources. This finding confirmed al-Weshah's (2014, 199) claim that Jordanians are provoked and feel threatened by the growing number of Syrian refugees and feel that they are drying up the country's limited resources. Thus, without adequate funding from foreign partners and international organizations, Jordan's continued hosting of Syrian refugees will not be sustainable.

Table 1 shows a descriptive analysis of the mean number of Syrian refugees living in Jordan yearly, or 610,859, and the mean amount of funding received each year for their care, or \$591,721,877.60. This suggests that Jordan spent an extremely low amount of \$96.88 per year (\$591,721,877.60 divided by 610,859) on each Syrian refugee.

**Table 1: Descriptive Analysis (Source: Author's research 2022)**

	N	Minimum	Maximum	Mean	Std. Deviation
Syrian Refugees	11	238,798	676,283	610,859.45	126,364.007
Funding Received	11	60,924,740	743,537,005	591,721,877.6	241,343,466.5

## Correlation

A correlation analysis examined the relationship between the funding received and the growing number of Syrian refugees in Jordan. Table 2 shows the correlation results.

**Table 2: Correlation Analysis (Source: Author's research 2022)**

Correlations			
		Syrian Refugees	Funding Received
Syrian Refugees	Pearson correlation	1	0.514
	sig. (2-tailed)		0.106
	N	11	11
Funding Received	Pearson correlation	0.514	1
	sig. (2-tailed)	0.106	
	N	11	11

There was a positive relationship between the funding received and the number of Syrian refugees in Jordan. This means increasing the number of Syrian refugees in Jordan should lead to increased funding from foreign countries and international organizations.

## Regression

A regression analysis was performed to determine whether the relationship between the funding received and the number of Syrian refugees was statistically significant. Table 3 shows the summary of the results.

**Table 3: Model Summary (Source: Author's research 2022)**

Model	R	R-squared	Adjusted R-squared	Std. Error of the Estimate
1	0.514a	0.264	0.183	218,181,028.5
a Predictors: Constant, Syrian refugees				

The results show a positive relationship between the funding received and the number of Syrian refugees ( $R=0.514$ ). However, the analysis found that approximately 26.4% of the increase in funding was attributed to the increase in the number of Syrian refugees in Jordan ( $R^2=0.264$ ). This means that other factors outside this study influenced 73.6% of the changes in funding. The ANOVA analysis shows an insignificant connection between the two variables ( $p\text{-value}=0.106 > 0.05$ ), as shown in Table 4.

**Table 4: ANOVA Analysis (Source: Author's research 2022)**

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	1.5404E+17	1	1.5404E+17	3.236	.106b
	Residual	4.28427E+17	9	4.7603E+16		
	Total	5.82467E+17	10			
a Dependent variable: Funding received						
b Predictor: Constant, Syrian refugees						

## Coefficient

Table 5 shows the coefficient of analysis of the degree of influence the number of Syrian refugees had on the funding received.

**Table 5: Coefficient analysis (Source: Author's research 2022)**

Model		Unstandardized Coefficients		Standardized Coefficients	T	Sig.
		B	Std. Error	Beta		
1	(Constant)	-8,255,282.968	339,955,583.5		-0.024	0.981
	Syrian refugees	982.185	546.001	0.514	1.799	0.106
a Dependent variable: Funding received						



## General Equation

The general equation is:  $[Y = -8,255,282 + 982.185 \times \text{Syrian Refugees}]$ . It implies a unit change in Syrian refugees would lead to 982.18 times the funding received. With a constant number of Syrian refugees in Jordan, the funding would be at the  $-\$8,255,282.97$  intercept.

## Policy Implication

The research found that whereas Jordan's humanitarian diplomacy strategy for Syrian refugees has had a positive impact on Jordan's foreign policy, the sustainability of the strategy as the influx of Syrian refugees continues may not be guaranteed with the current funding trends. Therefore, the Jordanian government must devise a more sustainable strategy to deal with the many Syrian refugees. This would include working with foreign countries and international organizations to develop a plan for obtaining enough resources to avoid internal conflict between Jordanian citizens and Syrian refugees over access to scarce resources.

## CONCLUSION

This research examined the effect of Jordan's humanitarian diplomacy policy for Syrian refugees on its foreign policy and the sustainability of the strategy as refugee needs continue to grow. Using data from a systematic literature review and data from UNHCR databases, the research found a positive impact of Jordan's humanitarian diplomacy strategy on its foreign policy. However, the strategy may not be sustainable with the current funding from international organizations and foreign countries. Since 2012, their funding has decreased, and as the total amount received has fallen short of what is required to support the refugees, the Jordanian government has been forced to make up the shortfall.

The research found a positive relationship between the number of Syrian refugees in Jordan and the funding received ( $R=0.514$ ). However, the relationship was statistically insignificant ( $p=.106>.05$ ). This means that the foreign funding for Syrian refugees was insufficient to meet the needs of the continuing influx of refugees. Hence, the Jordanian government had to intervene to meet the deficit.

The research also found that Jordan's humanitarian diplomacy enhanced a closer relationship with Syria and other foreign countries, especially European countries. The Jordan Compact and Jordanian Response Plan fostered bilateral agreements and cooperation with international organizations. Hence, the plan has raised enthusiasm for Jordan's foreign policy on a global scale.

This research added knowledge to the literature on the effectiveness of humanitarian diplomacy in promoting Jordan's foreign policy and its sustainability in Jordan. The limitation of this study was the small number of articles reviewed. Comprehensive quantitative research is recommended to determine the relationship between funding and various support programs for Syrian refugees in Jordan, such as health care and education.

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# MILITARY SANCTIONS: THE WAR ON TERROR AND THE CASE OF UZBEKISTAN

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**Abstract:** *States frequently find themselves disbursing or receiving military aid, cooperation, and access to military products. Using foreign policy options like "military sanctions" (the suspension of military projects, aid, cooperation, and access) is a desirable, widely publicized way for one state to express its discontent to another while presumably influencing desired policy changes in the client state. However, the small amount of evidence on military sanctions indicates that they are ineffective, short-lived, and may even be counterproductive. This analysis attempted to elucidate this subject by advancing a theory stating that states will impose military sanctions in response to domestic audience pressures shortly after high-profile examples of undesirable behavior by client states. However, military sanctions will be eased as time progresses and public attention has waned. This analysis qualitatively examined Uzbekistan and its relationship with the US, finding support for this theory. It concluded that following high-profile incidents and periods of undesirable behavior by an aid-recipient state, military sanctions would likely be employed by the state providing the military aid and programs. Further, military sanctions are eased or scrapped as time moves from public incidents and attention involving human rights abuses.*

**Keywords:** *Military Sanctions; Uzbekistan; Conflict; War On Terror; Foreign Policy*

## INTRODUCTION

Amongst the tools available for a state to coerce another state, short of war but sterner than a diplomatic rebuke, the use of sanctions is one of the most common. Typically, these are crafted as economic punishments designed to force/coerce states regarded as non-friendly into making policy choices that they do not find desirable. Thus frequently, they are used as an economic weapon for affecting policy choices against non-allies of the sanctioning country. However, research has shown economic sanctions to be largely ineffective, particularly against unfriendly regimes that do not anticipate amicable future relations with the sanctioning state (thus giving it little reason to buckle in the short term). These include using targeted sanctions against individuals or organizations and comprehensive sanctions against an entire state.

However, "military sanctions" against states have been far less studied in international relations. What is meant by this is the suspension of amicable military relations, supplies of military aid, as well as the availability of military hardware which a "sanctioned" state may be allowed to purchase from the sanctioning state. Although the suspension of customary government programs and aid falls into the defined realm of sanctioning activities (Carter 1987), research on the suspension of military programs and aid lags far behind the body of work focused on economic sanctions. What is interesting about military sanctions is that they, by default, can only be used against states allied to the sanctioning state (at least militarily), as

opposed to economic sanctions typically used against unfriendly nations to little effect (Pape 1998). Ironically, it has been found that economic sanctions typically work better when used against a country with whom the sanctioning state has friendly relations with (Cameron 2012).

However, what little research has been published on military sanctions (mostly their use to promote human rights in the sanctioned country) has indicated that not only are they ineffective in achieving their stated objectives (Broder and Lambek 1988; Kucera 2012), particularly in autocracies known for human rights violations (Allen 2008), but typically they are fleeting in their enforcement and existence (Lumpe 2010). In addition, although states often receive military aid with human rights conditions attached to them, this is frequently associated with worse human rights violations by aid-recipient countries (Sandholtz 2016; Christensen and Weinstein 2013). This is problematic, as military sanctions against friendly nations are not as effective as economic sanctions in achieving their stated objectives. So, knowing this, why would states engage in the use of military sanctions (the denial of aid, suspension of access to the sanctioning state's military hardware market, and/or the cut-off of military cooperation) to achieve policy aims like the promotion of human rights if they know that they will be ineffective?

This article advances a theory to explain this behavior amongst states that practice foreign policy choices such as military sanctions despite seeming not to work. It begins with reviewing the literature on sanctions and their effectiveness. Next, it advances a theory regarding the use of military sanctions. After this, it outlines the research design and case study methodology, followed by a case analysis of military aid and sanctioning regarding Uzbekistan. It finishes with a summary conclusion of the paper and suggestions for future research.

## LITERATURE REVIEW

The use of sanctioning activities in statecraft as a coercive tool is an ancient one, with the Athenian use of them against Megara in 432 BC being one of the impetuses which led to the Peloponnesian War (Friedman 2012). That being said, the exact definition of what it is to sanction a country has not seen common international consensus (with some viewing it as an act of war and some states viewing it as a peaceful means for inducing a state to make policy choices). However, Cameron (2012) offers a commonly cited definition of sanctions as the "deliberate, government-inspired withdrawal or threat of withdrawal of customary trade or financial relations" (p. 1). The contemporary use of the term "sanctions" conjures up the images of trade wars and oil embargoes. It may refer to both "smart/targeted" sanctions against small groups, organizations, and individuals, as well as comprehensive sanctions against the entire economy of a state. The main thrust of the research on this subject indicates that both types of sanctions fail to achieve their foreign policy objectives and frequently backfire by enabling the regime to have a greater excuse to double down on their policies by demonizing the sanctioning state (Drezner 2011; Pape 1998). It is conjectured that this failure may be partly because they are used against unfriendly countries and would ironically be more effective against allies (Cameron 2012).

As noted, the conventional use of the term "sanctions" frequently raises commercial connotations, such as the sanctioning of oil. However, the suspension of government programs and aid (such as in the military arena) is also included by nature in the repertoire of sanctioning



activities (Carter 1987), although not receiving nearly as much scholarly attention. This type of sanctioning is known as an act of “retorsion” and is a coercive one that is not in breach of international law (Carter 2003) and is used against countries with whom the sanctioning state is allied. Laws and legislation exist in states that export arms and dispense military aid, which provides for military sanctioning.

One notable example is the United States of America (US). The US is the world’s largest military exporter and provider of military aid (Wezeman, Fleurant, Kuimova, Tian, and Wezeman 2018). It has several related court cases and laws for its suspension. In the case of *United States v Curtiss-Wright Export Corp. (1936), 299 US 304*, in response to a military conflict playing out between Paraguay and Bolivia, the United States Supreme Court upheld a presidential decree barring US companies from selling weapons, ammunition, airplanes, and any other war material to those two countries. Almost half a century later, Congress passed The Arms Export Control Act (1976), PL No. 94-329, 90 Stat. 729 allowed the authority to sanction the export of weapons, ammunition, and other products for war-making. Arms sales and aid, as noted, frequently come with stipulations (often related to human rights) as to their use and continued disbursement, with violations resulting in their sanctioning based on The Arms Export Control Act (1976) (Tana1986). Thus in the world’s largest purveyor of all things military, the notion of military sanctions has a longstanding place in legislation and laws for its use as a tool of coercion.

However, military sanctions are a significantly complex subject. Although similar to economic sanctions in that a targeted state would have to make up the financial shortfall in their defense budget which would theoretically result from the imposition of military sanctions, there is significant symbolism associated with military sanctioning, which may not be present with economic sanctions. Defense cooperation between states carries with it connotations of state survival, and thus it is often paramount to the leaders of many states. Thus, attaching conditions unrelated to defense to military aid and programs is controversial, despite being utilized to promote policy objectives like economic reform, the promotion of human rights, and fair governance (Murshed and Sen 1995). The United States prides itself as a promoter of human rights and has ostensibly sought to use its clout as a provider of military power to achieve these policies worldwide. These policies include the non-targeting of civilians and noncombatants, especially with the help of military aid provided (such as supplied munitions and armored personnel carriers being used against peaceful protestors, for example). Those practices have long been prohibited by international norms and laws against such conduct (Valentino, Huth, and Croco, 2006). Furthermore, as time has passed, international treaties and legislation against human rights violations (including by one’s government) have only gained in both numbers and momentum (Murphy 2018; Rochester 2006). This has then given rise to the use of sanctions to enforce these treaties, with sanctions (military or otherwise) in this regard being used as an “(...) action against a state considered to be violating international law [designed] to compel that state to conform” (Daoudi and Dajani 1983, 5-8).

The use of military sanctions to achieve humanitarian aims has been utilized in practice by major arms exporters such as the United States. After the end of the Cold War, attention began to be paid to regimes that committed human rights abuses that had previously gotten a pass in the name of the ideological battle being waged during the Cold War. Support for unscrupulous dictators was rife by the capitalist and communist blocs during the Cold War.

However, the evaporation of those rivalries aroused a greater interest in utilizing laws like The Arms Export Control Act (1976) to place humanitarian stipulations on military aid. If these stipulations were not met, in theory, then military sanctions would be put into effect, and military sales/aid would be suspended.

One example of this was the case of pre-collapse Somalia. After the Cold War, the United States Congress began to take umbrage regarding US aid sent to Siad Barre due to Somalia's use of American weapons to kill civilians (Gershoni 1996). As a result, aid was suspended, and Siad Barre eventually had to turn to Libya for military support. Another example is the case of Liberia. According to Gershoni (1996):

Even before the 1990 rebellion, some US congressmen advocated cutting aid to Liberia because of the Doe regime's human rights abuses. In early May 1990, in response to information about atrocities against civilians by government troops, Congress passed a bill suspending US military aid to Liberia. In the post-cold war era, Samuel Doe's regime, once an asset that the US had made great efforts to shore up, was a burden (p. 241).

The interesting thing about military sanctions is that, as opposed to how economic sanctions are often utilized, they are used against allies. Economic sanctions are often used as a tool of statecraft, short of warfare but harsher than a diplomatic rebuke, ostensibly designed to affect policy change in a targeted state. However, literature has shown that economic sanctions seldom achieve their objectives, in part because they are used against unfriendly regimes with little reason to expect friendly treatment in the future and thus have no interest in acquiescing to demands in the short-term (Pape 1998).

Economic sanctions are thought to be more effective against friendly nations (Cameron 2012), which is ironic because they are seldom necessary against states with amicable relations with the potential sanctioning state. It would then stand to reason that military sanctions would effectively achieve their stated policy goals, considering that they are naturally used against friendly nations. However, it would appear that this has not always been the case and that the effectiveness and duration of military sanctions against states have not appeared robust (Broder and Lambek 1988; Lumpe 2010; Kucera 2012). Furthermore, although states often receive military aid with human rights conditions attached to them, this is associated with worse human rights violations (Sandholtz 2016; Christensen and Weinstein 2013) in aid-recipient states. So why would countries such as the United States of America, the largest provider of military hardware and aid in the world, bother employing military sanctions against allies while knowing that they seem ineffective in achieving their stated goals?

The paper below will propose a general theory explaining this phenomenon and advancing two hypotheses regarding the implementation and duration of military sanctions, which were created to achieve foreign policy changes (such as good governance and human rights).

## THEORY

Presuming that countries such as the United States, which furnishes a large amount of the world's military programs and aid, realize that military sanctions do not achieve many substantive or long-lasting achievements regarding their stated objectives, why do they use them on countries which are by nature allies? What literature there has been on military aid and sanctions are troubling. It would appear that rendering military aid, which includes stipulations regarding human rights, is associated with worse human rights violations among aid recipients (Sandholtz 2016; Christensen and Weinstein 2013) and that military sanctions based on these violations are ineffective and short-lived (Broder and Lambek 1988; Lumpe 2010; Kucera 2012).

This article theorizes that a state may utilize military sanctions in response to domestic audience pressures placed upon the leaders of that state to take some action when confronted with undesired behavior by an aid-recipient state. The stated objectives of sanctioning regarding military aid are frequently related to good governance and human rights (Murshed and Sen 1995). The leaders of a state which provides military programs and aid may employ military sanctions as a powerful signal to their domestic constituents that they are taking concrete steps to affect the proliferation of human rights, as military aid can be seen to a state as critical to its very survival, a sanctioned state would feel heavy pressure to conform to their benefactor's policy preferences. Thus military sanctions may follow an especially egregious example of human rights abuses in a country receiving military aid. This should, in theory, appease domestic constituents and ensure the continued tenure in office of leaders. At least 61.7% of the world's military arms exports are by democracies (United States, France, Germany, United Kingdom, Spain, Israel, Italy, and the Netherlands), and thus the leaders are susceptible to being ejected from office during the next election if they are seen as being too friendly with regimes which commit human rights abuses (Wezeman et al. 2018).

For leaders of states who furnish military aid, using military sanctions is a way of avoiding that fate. This is despite their lackluster success at achieving long-lasting policy goals (Broder and Lambek 1988; Lumpe 2010; Kucera 2012). Drezner (2011) noted that economic sanctions "solve the political problem of 'doing something' in the face of target state transgressions. They do not solve the policy problem of coercing the target state into changing its policies" (p. 104). I theorize that military sanctions function similarly; they indicate to a domestic audience that a leader is "doing something" by suspending something as vitally important to a state as military cooperation and aid. Christensen and Weinstein (2013) note that "decisions to restrict foreign support (...) reflect policy makers' reading of (...) domestic (...) incentives (...) domestic concerns are paramount (...) even in partial democracies" (p. 79). The domestic pressure on a leader to punish a state receiving military aid for misbehavior should be highest following an especially visible and egregious example of undesirable behavior (such as mass human rights violations). This leads to the first hypothesis:

**Hypothesis 1:** Military sanctions will likely be utilized following especially high-profile and egregious incidents of undesirable behavior in a state receiving military cooperation or aid.

In this way, the leaders conform to their constituents' immediate desire by acting in a high-profile manner to express displeasure with the now-sanctioned state. In levying these sanctions, the leaders indicate they are willing to risk costs associated with foreign policy failure at home. Thus, they seek to show how seriously they take their selectorate's domestic concerns by acting (Partell and Palmer 1999). However, the attention paid to particular spells or incidents of misbehavior over time tends to wane amongst domestic audiences. Furthermore, in a sector of such critical importance to states as military and security cooperation, over time, national security priorities may supplant desires to achieve foreign policy goals like promoting human rights in the calculus of states' purveyors of military equipment and aid. This may explain the fact that military sanctions are often short-lived in nature. This leads to the second hypothesis.

**Hypothesis 2:** Military sanctions will tend to be eased as time progresses away from high-profile and egregious incidents of undesirable behavior in a state receiving military cooperation or aid.

In testing these two hypotheses, this article seeks to explain the use of military sanctions by states who, presumably, recognize their short-lived and ineffective tenure of activity.

## METHODS

To test the hypotheses, this article employed a case-study approach on military aid and sanctions to Uzbekistan from the world's largest provider of such, the United States. The case-study approach, a detailed examination of a portion of a historical episode to test or develop hypotheses that may relate to other events, is appropriate in several ways: it allows for high levels of conceptual validity, aids in deriving new hypotheses, explore the operation of causal mechanisms in individual cases in fine detail, as well as having the ability to allow for intricate causal relations such as path dependency, complex interactions effects, and equifinality (George and Bennett 2004).

The use of case-study methods in international relations is a useful methodology for various reasons. Bennett and Elman (2007) note that:

One important reason why qualitative methods have been important in IR research is that case study methods, especially the combination of process tracing and typological theorizing, have considerable advantages. The prominence of qualitative methods in IR thus reflects these methods' advantages in studying complex, relatively unstructured, and infrequent phenomena that lie at the heart of the subfield (p. 171).

This prominence of case studies is not without a warrant in international relations, as they can help identify interactions between variables while establishing a chronological series of events (Sambanis 2004). The choice of Uzbekistan and its recipient role for military aid and sanctions for this case study rests on its geopolitically unique position. It is an aid recipient from the world's largest provider of military aid, the United States. This should make its actions high-profile to the US public due to Americans' attention and prominence on human rights and good

governance and the press freedoms enjoyed in the US to broadcast egregious violations. Thus public pressure in the US to pressure Uzbekistan through military sanctions might be expected to achieve desired policy changes.

The US military equipment is modern and sophisticated and requires continued maintenance by specialists trained to take care of military equipment and provide specialized aid. Thus, its suspension might be useful leverage against a country like Uzbekistan, which has the largest military in Central Asia and its largest population (Lumpe 2010). Uzbekistan is of strategic importance to the United States, situated where it is by Russia and Afghanistan. Thus the United States presumably has an interest in consistent, stable, and amicable relations with Uzbekistan on many fronts (militarily as well as in human rights cooperation, for example). To achieve its strategic objectives, successive presidents and other lawmakers have considered this dynamic.

Unfortunately, Uzbekistan is not especially known for upholding human rights. Thus this case provides a good example of states which need each other for various security purposes but also one where high-profile human rights abuses can happen, which may provoke military sanctions as a response on behalf of the supplier of military aid. The next section examines the military aid relationship between the United States and Uzbekistan through the lens of the two hypotheses to test this article's novel theory.

## **MILITARY SANCTIONS AND THE CASE OF UZBEKISTAN**

Uzbekistan is a place of ancient history thrust into the modern world with the Russian Revolution. At one point, it lay on the Silk Road, but for much of its history, it fell within the sway of Russia. From 1917 to 1920, the Bolsheviks conquered the area, and from 1921-1924 the territories were reconfigured into Uzbekistan and its neighbors (Uzbekistan Profile-Timeline 2018). During Stalin's purges, native Uzbeks were marginalized and replaced with Communist party loyalists. However, from the 1970s to the 1980s, Uzbek Communist chief Rashidov promoted the rise of ethnic Uzbek over Russian officials, reflecting a trend toward nationalism in the area (Uzbekistan Profile-Timeline 2018). His successor, Islam Karimov, took even further steps in shaping the modern state of Uzbekistan. According to Hiro (2009), in 1990, the Uzbek Supreme Soviet "declared its sovereignty in October 1990, which gave primacy to Uzbek laws over Soviet laws, and elected [Karimov] executive president of Uzbekistan" (p. 140), a role he filled until he died in 2016. With the complete collapse of the Soviet Union in 1991, Uzbekistan became a fully independent nation, but one which had not yet managed to escape the shadow of Moscow.

Due to geographic proximity, Uzbekistan must still consider Russia's actions in considering its security concerns. After the collapse of the Soviet Union, Uzbek military considerations have focused on concerns over Islamic militancy, the threat of Russia, and using military cooperation with other governments (particularly the United States) to open up to the outside world. Kucera (2012) notes that:

Uzbekistan, which has strong security forces, appears to pursue military cooperation with the United States out of geopolitical considerations. Related to the desire to balance Russia is Uzbekistan's desire to not be an

international pariah, and the government sees the normalization of US military relations as playing an important symbolic role in that effort (p. 22).

Sharing a border with Afghanistan also gives the Uzbek government cause for concern, with militant groups seldom respecting borders in their efforts. Over the years, Uzbekistan has cracked down on militant Islamists, with the detonation of several bombs in Tashkent in 1999 killing over a dozen people and sparking skirmishes between the Islamic Movement of Uzbekistan (IMU) and the Uzbek military (Uzbekistan Profile-Timeline 2018). However, these crackdowns have also caused international concern and initially gave the United States hesitation in providing military aid to Uzbekistan. However, this largely changed after the terrorist attacks of 11 September 2001. The US, for its part, was initially put off by Uzbek overtures on military cooperation following the collapse of the Soviet Union. Akbarzadeh (2007) noted that:

In the first decade after the collapse of the Soviet Union, these overtures were received with unease in Washington US administrations had serious misgivings about associating closely with an authoritarian regime with a very questionable record on human rights. But, to the delight of the Uzbek authorities, these concerns were abandoned after 11 September (p. 109).

With the advent of the Global War on Terror, specifically, the campaign in Afghanistan's concerns over Uzbekistan's human rights record lost priority to the overall security objectives of the conflict. US military aid to Uzbekistan escalated dramatically, including the training and equipping of special forces units which could and were then used against Uzbek civilians and noncombatants with little repercussions (Kucera 2012).

The American military footprint in Uzbekistan and the generous amount of military aid to the country was much more robust than would first appear, despite all the previous concerns over its human rights record. According to Hiro (2009), just one week after 11 September:

Two large US Hercules transport planes, carrying 200 troops and loaded with surveillance equipment to be installed along the Uzbek-Afghan border, landed secretly at a military base near Tashkent. But it was not until 1 October that the government disclosed it would open its airspace to US forces without mentioning that the Karshi base near Khanabad (aka K2) was being made available to the Pentagon. Washington's annual grants to Uzbekistan were to rise threefold to \$150 million, a very substantial amount for a country whose foreign reserves at one point had fallen to \$1 billion (p. 173).

Although US leaders knew that there was an inherent risk in helping the military forces of a country that is known for human rights abuses, that this aid could be turned around and used against their population, after the thunderclap of the terrorist attacks on 11 September this took



secondary importance in the minds of policymakers and the American public (Kucera 2012). Lumpe (2010) observed:

The State Department tried to pursue a dual policy that promoted the strategic aims of the DOD while emphasizing that the cooperation would only be sustainable if Uzbekistan undertook political reforms; funding priorities indicated a significantly greater focus on the counterterrorism agenda than on the democratization/reform agenda (p. 4).

However, incidents of human rights violations would pop up now and again, causing the use of military sanctions as a response. One incident, the Andijan massacre of 2005, in particular, gained high-profile notoriety, leading to the use of military sanctions by the United States.

On 13 May 2005, thousands of Uzbekistan's citizens gathered in the central Babur Square of Andijan. They had assembled to listen to the urgings of speakers against their countries' high levels of corruption and deepening poverty. Soon, about 12,000 troops from the intelligence services, Interior Ministry, and military began arriving in armored personnel carriers of the type provided by the United States in their military aid disbursements to Uzbekistan. The troops began closing off the exits to the square and then allegedly began firing live ammunition from automatic weapons at the gathered civilian protestors, shooting and killing those already wounded and women and children (Hiro 2009). Estimates of the dead range from the official count of 187 to over 800 casualties (Kendzior 2007). The government claimed that the casualties were terrorists and that no innocent people were hurt during the events at Andijan. However, this was merely the most high-profile and egregious example of a pattern of human rights abuses that had not seriously hampered military aid before but had now captured the attention of the world and the American public. Kendzior (2007) observed that since independence, Uzbekistan has:

Embraced an increasingly authoritarian style of rule marked by a powerful police presence, persecution of Muslims who practice their faith in non-state-sanctioned sites, absolute media censorship, and arrest or exile of perceived political opponents. Following the events in Andijan, which attracted (albeit briefly) worldwide attention, Uzbekistan became even more insular and oppressive. Hundreds of Uzbek human rights activists, political figures, journalists, pious Muslims, and apolitical citizens suspected of being any of the above have been arrested, incarcerated, and, sometimes, tortured (pp. 318-319).

The response of the Uzbek government to these allegations following the Andijan massacre was dismissive of any human rights violations, insisting that casualties consisted of terrorists killed and that no innocent civilians were hurt (Kendzior 2007). On 31 May 2005, President George W. Bush publicly requested the Uzbek authorities allow a Red Cross investigation of the massacre, followed shortly after by the public questioning of six US senators of military aid and cooperation to Uzbekistan (Akbarzadeh 2007). Towards the end of July 2005, Uzbekistan formally evicted US forces from their base at K2. In November, a formal condition on US military aid to the Uzbek government was created, requiring an international investigation of

events in Andijan. In May 2006, without being able to certify progress by Uzbekistan on human rights and bowing to enormous public pressure, the United States imposed serious military sanctions on aid and cooperation with the government of Uzbekistan; it would not be until August of 2009 before the Uzbek Minister of Defense Kabul Berdiev and CENTCOM Commander General David Petraeus again signed an agreement setting out a program of inter-military contact having to do with training and educational exchanges amongst military personnel (Lumpe 2010).

In response to the egregious example of the Andijan massacre and the enormous public pressure it created, the US sanctioned military aid and cooperation with the government of Uzbekistan, which would last for over three years. This was against the serious backdrop of the Global War on Terror, a conflict in which Uzbekistan had been a willing and valuable participant and a beneficiary of military aid, showing just how serious the imposition of military sanctions was regarded as being. This supports the hypothesis that military sanctions will likely be utilized following especially high-profile and egregious incidents of undesirable behavior in a state receiving military cooperation or aid. However, after the next American presidential election had occurred and US domestic attention to human rights in Uzbekistan had waned, military aid again began to flow into the country as the Global War on Terror continued. This would follow a recurring pattern involving US military aid and sanctions on Uzbekistan. Military aid and cooperation would be suspended for human rights violations for a short period. However, within a few months or years, it has consistently been reinstated with the justification that Uzbekistan is subject to terrorist threats from Afghanistan and is a valued partner in the fight against terrorism (Kucera 2012). The following is a brief timeline of US military aid, as well as its sanctioning, regarding Uzbekistan (Lumpe 2010; Kucera 2015; Putz 2018; Akmatalieva 2021; Kim and Tsereteli 2022):

- August 1995 - Uzbekistan signs a security agreement with NATO a few years after independence.
- March 1997 - President Clinton certifies Uzbekistan is eligible to receive military aid from the US, as authorized by *The Arms Export Control Act*. US Army "Green Berets" train with special forces in Uzbekistan on-field tactics, airborne assault operations, and counterinsurgency.
- February 2000 - The first sizeable arms transfer to a Central Asian country occurs, with the US transferring radios, night-vision goggles, and 16 military transport vehicles to Uzbekistan.
- May 2000 - CENTCOM Commander General Anthony Zinni visits Tashkent, telling President Karimov that he wants a closer military relationship but is being held back because of public human rights concerns.
- 11 September 2001 - Al Qaeda launches multiple terrorist attacks against the United States, sparking the Global War on Terror. One month later, the US began to send troops to the K2 airbase in Uzbekistan.
- March 2002 - The "Declaration on Strategic Partnership and Cooperation Framework" is signed by the US and Uzbekistan, with the US pledging to re-equip the military of Uzbekistan while Uzbekistan pledges to increase efforts in the realm of human rights.

- August 2002 - In response to public concerns about Uzbekistan's human rights records, military aid to Uzbekistan is conditioned on the secretary of state's certification that Uzbekistan is progressing on human rights.
- July 2004 - Some military sanctions against Uzbekistan are implemented due to publicized human rights violations.
- July 2004 - Shortly after these sanctions were implemented, a suicide bombing against the US embassy in Tashkent led to criticism against the military sanctioning aid and cooperation.
- 13 May 2005 - Uzbek troops open fire on crowds in Andijan, causing a massacre that leads to worldwide condemnation.
- May 2006 - In light of the Andijan massacre, the Secretary of State cannot certify progress by Uzbekistan on human rights. Significant military sanctions against the country are in effect.
- August 2009 - The US and Uzbekistan signed an agreement outlining military-to-military contact involving educational exchanges and training, resuming active military cooperation a little over three years after the Andijan massacre.
- December 2009 - The State Department/Foreign Operations Appropriations Act for FY 2010 is enacted. Due to renewed public human rights concerns, it contains a prohibition on aid to Uzbekistan.
- January 2010 - The US Department of Defense issues a proposed rule change to permanently alter the Defense Federal Acquisition Regulations to allow for the commercial exchange of goods and services with Uzbekistan.
- January 2015 - The United States donates over 300 Mine-Resistant Ambush Protected (MRAP) vehicles to Uzbekistan, its largest transfer of military equipment at that time to a Central Asian Country.
- May 2018 - After meeting with Uzbek President Shavkat Mirziyoyev, President Donald Trump stated that the US and Uzbekistan were "working together from the standpoint of the military, including his purchase of equipment and military equipment from the United States". He did not mention human rights.
- January 2021 - US President Joseph Biden reaffirms support for Uzbekistan despite continuing low-profile human rights violations. His administration's policy states that stability and security in Uzbekistan "contribute directly to the US efforts to combat terrorism, support regional stability, ensure energy security, and enhance economic prosperity in the region and beyond".
- March 2022 - During his 9 March meeting with Uzbek Foreign Minister Abdulaziz Komilov, Secretary of State Antony Blinken asserted that "We appreciate the strategic partnership between Uzbekistan and the United States, the work that's being done through that; very much welcome the strong humanitarian support that you have been providing to the Afghans on the one hand and now Ukrainians on the other". Again, no mention was made of Uzbekistan's still troubling but no longer high-profile domestic human rights record, and unimpeded military cooperation and aid have continued to the present time.

As one can see, this timeline contains periods where human rights issues took center-stage and took precedence over American military relations and aid to Uzbekistan, such as during the tumultuous period just after Uzbek independence but before 11 September 2001, as well as following the infamous Andijan massacre, which then resulted in military sanctions. This falls in line with the first hypothesis. After that, although human rights violations occasionally reared their head as an issue in Uzbekistan, American public attention to human rights abuses there began to wane with time. Within a short period, stipulations on human rights requirements were gradually brushed over, and military sanctions were eased as military aid and cooperation between the two countries resumed. This aligns with the second hypothesis that military sanctions will tend to be lifted as time progresses from publicly visible incidents of undesirable behavior in a state receiving military cooperation or aid.

## CONCLUSION

This article has sought to explain states' use of military sanctions against their allies, even though they are ineffective and short-lived in achieving their goals. It theorized that states use military sanctions to appease domestic audiences by appearing to take concrete measures to achieve desirable foreign policy objectives. It hypothesized that domestic pressure to place military sanctions would be at its strongest following an especially high-profile example of undesirable behavior on the part of the state receiving military aid, likely resulting in the implementation of military sanctions, but that over time these military sanctions will be eased as domestic attention to the issues which sparked them wane. To test its hypotheses, the article conducted a case study on military aid and sanctions toward Uzbekistan by the world's largest provider of military aid and hardware, the United States. The analysis supports the two hypotheses. Following high-profile incidents and periods of undesirable behavior by an aid-recipient state, military sanctions will likely be employed by the state providing the military aid and programs.

Further, military sanctions are eased, if not scrapped altogether, as time passes from public incidents and attention involving human rights. A contemporary example can be seen by observing the case of Saudi Arabia after the 2018 assassination of Jamal Khashoggi, which was followed by the subsequent use of military sanctions by the United States and its partner nations towards Saudi Arabia then, followed a few years later by their easing. This example demonstrates the validity of this article's hypotheses.

Case studies, particularly single case studies, occasionally are thought to contain a problem with degrees of freedom, meaning that there is the possible inability to discern between competing explanations based on what evidence there is (George and Bennett 2004). A suggestion for future research on military sanctions, particularly in Central Asia, would be to broaden the study to include other states in the region to draw comparisons. Other Central Asian countries such as Turkmenistan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkey, and Iran have many similarities yet stark differences. Conducting a regional case studies analysis might determine whether the theory on the use of military sanctions could be applied to other countries in this part of the world or elsewhere and thus may deepen our understanding of this understudied tool of coercive statecraft.

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# THE IMPACT OF PUNISHMENT, BUDGET SPENDING, AND SOCIAL STIGMATIZATION ON FISCAL EVASION: THE CASE OF KOSOVO

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**Abstract:** *The purpose of this paper was to identify several factors that have an impact on tax evasion. Tax evasion is considered a problem for many different countries in the world, simultaneously attracting the curiosity of researchers. The study employed a convenience sampling technique and collected 221 questionnaires in Kosovo. Data were analyzed using descriptive statistical analysis, linear regression and are reflected in the matrix table of correlation coefficients. In this research, the statistical significance results appear the size of punishment, perception of spending of budget, and social stigma that has effected tax evasion. In this way, as lower the punishment for evaders effected non-encourage citizens to notify the tax evasion. Perception of non-spent properly of budget effected non-encourage citizens to notify the tax evasion. Also, when the lower was a social stigma for the evaders, it increased their willingness to tax evasion.*

**Keywords:** *Tax Evasion; Punishment; State Budget; Precipitation; Tax Administration; Linear Regression; Stigma*

## INTRODUCTION

The paper aims to find the determinants that help to promote tax compliance. During this research, several questions were presented to the respondents, where, consequently, some important determinants were found in the research results. This paper is mainly based on the socio-psychological model, including the elements from the economic prevention model. The research is intended to measure the level of awareness of the citizen as a consumer, therefore, to measure their readiness to notify the Tax Administration of Kosovo (TAK) about possible tax evasion. Also, through this research, it is intended to measure the perception of the citizen as a consumer, how they perceive the level of punishment and the perception of how much the state budget is spent properly and correctly, and how much these two variables reflect on the readiness of the citizen as consumers to notify the tax administration (ATK) of possible evasion. There are two dependent variables and four independent variables in the paper. One of the dependent variables is the number of notifications or reports to the tax administration from citizens-consumers. On the other hand, we have two independent variables: the perception of the size of the penalties and the perception of spending the state budget correctly. While the other dependent variable is the level of readiness of businesses and persons to commit tax evasion; in the face of two independent variables, the level of stigmatization towards those who

cause evasion, and the other independent variable is the level of state-citizen cooperation to fight together fiscal evasion.

The research was conducted through questionnaires, where about 250 questionnaires were issued, and we received answers from 221 respondents. The questionnaire was released through online apps.

From the statistical analyses carried out in this research, significant relationships between the dependent and independent variables have resulted. The research concluded that there is a perception that the punishment for the tax evader is low; therefore, it does not encourage the citizens-consumers to notify the tax collection administration about possible tax evasion. Likewise, the level of notification or reporting to the tax administration for possible fiscal evasion is also due to the perception that the state budget is not being spent fairly or properly; therefore, this variable has also caused the citizen not to be encouraged to notify the tax administration of possible tax evasion. Likewise, the second dependent variable, which is the readiness of the evader to carry out evasion, was shown to be significant with low stigmatization towards the evader. So the readiness for evasion increases as long as they are not stigmatized. Likewise, in the other independent variable, which is the cooperation between the states on the one hand and the citizen-consumer, with the evasiveness here, we do not have statistically significant results.

## **LITERATURE REVIEW AND HYPOTHESIS**

Based on the theory available for fiscal evasion and the direction of scientific research in this field, this paper is also based on similar models for fiscal evasion research, respectively, the determinants that influence fiscal evasion. In this part of the paper, the theoretical part has been found to stimulate or develop the hypotheses in advance so that our presented hypotheses have their theoretical support. In the following, presented are the theoretical parts for certain hypotheses that have been shown.

### **Notifying the Tax Administration of Possible Evasion**

Fiscal evasion is affected by the attitude of consciousness of taxpayers and moral taxes, and that form of consciousness is present in every taxpayer (Sumartaya 2014, 60). Taxpayers know that paying taxes is every citizen's absolute duty (Irianto 2005).

Where taxpayers' awareness of the tax code and its complexity is lacking, it affects the growth of fiscal evasion (Alstadsæter 2013, 23). Are finding persistent evidence that low-tax moral countries engage in tax evasion via roundtripping (Kemme 2020, 9). Cracking down on evasion by the wealthy can be an effective way to raise tax revenue, increase tax progressivity, and ultimately reduce inequality (Alstadsaeter 2022, 3).

### **The Level of Punishment**

Many studies have found that penalties encourage tax compliance. Mainly the studies were focused on two directions, on the one hand, they have researched the real punishments as

a result of experimental studies, and on the other hand, on the taxpayer's perception of the level of interference and the perception of punishment in tax compliance (Devos 2014, 79). Likewise, responses regarding respondents' opinions of the severity of punishments were obtained for this paper.

Large fines were found to be more effective deterrents than frequent audits (Friedland 1978, 1). In "the tax laws are two kinds of tax penalties, administrative sanctions and criminal sanctions. Administrative sanctions may be imposed if the taxpayer makes such abuses, the administrative sanction penalties, interest, and rising. Criminal sanctions are liable to a jail sentence-prison" (Savitri 2016, 684).

In this regard, (Grasmick 1982, 213) they have examined the relative power of legal sanction, guilt, and social stigma as deterrents for wrongdoing. They found statistically significant relationships, where the threat of legal punishment was the least powerful among the three factors. In comparison, the other two factors were guilty and social stigma, two highly significant factors in the regression analysis. Hence, it is suggested that non-monetary variables are also important in fulfilling taxes; respectively, the state's fiscal behavior model is extremely important (Fisher 1992).

The punishment variable is important to research tax compliance, but not only this variable, but it is necessary to include other factors to carry out complete research. Therefore, for improving compliance, punishment is a very important factor that should not be underestimated for measuring and achieving the prevention of tax evasion.

Based on the theory and the results of other research that punishment has an important role in the fulfillment of taxes, this paper presented it as a variable to measure the perception of citizens-consumers, how they perceive the level of punishment for tax evaders, and how much are encouraged report possible tax evasion.

**H1:** If the perception that the level of punishment for fiscal evasion is not at the right size, then the citizen-consumer is not encouraged to notify the administration of tasks for possible fiscal evasion.

Prescribing that if the level of punishment is low, this will not hit the tax evader in a deserved way. Therefore, this will not encourage the citizen-consumer to notify the tax administration of possible tax evasion.

### **Spending the Budget in the Right Way**

The state budget of public revenues could finance public health services, education, public order and safety, and others (Androniceanu 2019, 33). When the state budget spends right, citizens feel like partners with the government. When individuals feel like partners with the government, their honesty will be higher compared to when the individual has a sense of inferiority (Alm 2006, 14).

Unless tax authorities take pains to administer in principles, tax avoidance would reduce a government's tax revenue and significantly impact social welfare (Hanousek 2004, 2). Government transparency toward citizens is important (Feldstein 2002). Also another

determinant is building a relationship of trust between the government of a country and individuals or businesses as taxpayers. From this, it follows that if there is mutual trust, transparency, non-inferiority, and a relationship of cooperation, then it has a positive effect, respectively affecting the reduction of fiscal evasion in the country.

There are also several factors from different studies related to the perception of taxpayers on the performance and behavior of the government (perception of corruption and transparency), respectively, as trust in the government and institutions (Andreoni 1998).

The studies argue that where there is a willingness to cooperate between the government and certain groups or citizens, the latter is convinced to fulfill the rules (Tyler 1997). In this direction, the treatment also appreciates what the certain government gave to the people, the taxpayers.

It is suggested that non-monetary variables are also important determinants of tax compliance (Fisher 1992).

Evidence has been found that the social welfare system and the misuse of the budget collected by taxpayers have impacted fiscal evasion (Devos 2014, 163).

Therefore, as far as it is estimated, the transparency of spending the budget in the right way, as well as the good cooperation between citizens and businesses as taxpayers on the one hand and state institutions on the other, affects the increase in performance in fulfillment. In this direction, the hypothesis was built as follows:

**H2:** If the perception is that the collected budget is not spent correctly, then the citizen-consumer is not encouraged to notify the administration of the tasks for possible fiscal evasion.

### **Stigma as a Factor in Preventing Evasion**

It also plays an important role in preventing tax evasion in societies where people or businesses are stigmatized for avoiding taxes. Various studies have found that social stigmatization; guilt is important (Grasmick 1982, 213). Tax avoidance by firms may entail a psychological cost known as stigma, and results imply that stigma has implications for improving social welfare (Hamamur 2021, 3). Therefore, stigmatization has often been a significant variable concerning fiscal evasion, respectively, the higher the stigmatization influenced the reduction of fiscal evasion.

**H3:** If there is no strong stigmatization against those who avoid taxes, then the willingness of the evader to commit tax evasion whenever the opportunity is given to the evader will be high.

### **Cooperation between the State and the Citizens**

As mentioned above in the second hypothesis, a good relationship between the citizen and the state influences the citizen to behave better with the state concerning fiscal evasion. The behavior of the state is important to the citizen (Fisher 1992). Partnership with the government made citizens more honest towards the state (Alm 2006, 12). Citizens' dissatisfaction with the state can manifest negatively (Hanousek 2004, 24). Government transparency to the citizen is

equally important (Feldstern 2002). Providing online information and services by the government to its citizens alleviates tax evasion and increases tax revenue (Uyar 2021, 1). Whether taxes are redistributed to the participants or real-life public goods significantly impacts tax compliance (Alm 2021, 1-55). Therefore, based on this, we also raised the hypothesis in this research, how much will the willingness of persons/businesses for fiscal evasion be reduced when good cooperation between the citizen and the state is perceived.

**H4:** If there is not a strong relationship between the institutions and the citizen, then the willingness of the evader to carry out tax evasion whenever the opportunity is given to the evader will be high.

As presented above, hypotheses were developed based on preliminary theories for these attitudes regarding their impact on fiscal evasion.

**Table 1: Summary of Primary Research Questions (Source: Authors' compilation)**

Code	Primary Questions	Dependent Variable	Independent Variable
H1	<i>If the perception that the level of cooperation for fiscal evasion is not at the right size, then the citizen-consumer is not encouraged to notify the administration of the tasks for possible fiscal evasion.</i>	Notification of the Tax Administration about possible fiscal evasion.	Size of penalties.
H2	<i>If the perception is that the collected budget is not spent correctly, then the citizen-consumer is not encouraged to notify the administration of the tasks for possible fiscal evasion.</i>	Notification of the Tax Administration on possible fiscal evasion.	Spending the budget in the right way.
H3	<i>If there is no strong stigmatization of those who avoid taxes, then the evader's willingness to commit tax evasion whenever the opportunity is given to the evader will be high.</i>	Readiness of the evader to carry out evasion.	Stigma.
H4	<i>Suppose there is not a strong relationship between the institutions and the citizen. In that case, the willingness of the evader to evade taxes will be high whenever the evader is given the opportunity.</i>	Readiness of the evader to carry out evasion.	The relationship between the state and citizens in the fight against fiscal evasion.

## RESEARCH METHODOLOGY

A quantitative data approach was used, and statistical results were derived from these data. To obtain a representative sample for Kosovo, the survey used random sampling. The data were collected from the questionnaires in electronic form through online apps; in this form, we also received the answers. This data collection tool, through the questionnaire, enables it to reflect the descriptive statistical analysis automatically. It also contains the data in excel form collected and prepared to be used further for statistical analysis. Two hundred twenty-one (221) questionnaires were completed when we stopped collecting and started analyzing the data. The data collection was carried out in the Republic of Kosovo. From the collected data, two types of analysis were made, such as: firstly, descriptive statistical analysis was made, and secondly, correlation analysis was performed and regression analysis, where which enabled us to find the relationship between the variables in the research, where it was derived the coefficient of correlation and coefficient of P-Value through linear regression. Also, it was performed the collinearity test.



## Data Collection and Analysis

### *Descriptive Analysis*

In order to prove the first hypothesis, data were collected from the questionnaire, where the respondents were asked if they had ever notified the tax administration in cases where they were not given a fiscal coupon or invoice for the purchase of goods or services. From the answers received, it is shown that out of 217 respondents who answered this question, 189 or 86.6% of them answered that they never notified the tax administration for not providing the fiscal coupon or invoice during the purchase, until only 20 of them or 9.2% reported it 1 to 3 times a year, the rest are unimportant results. Therefore, seeing this result that the consumer is not encouraged to notify the tax administration, this question was posed as a dependent variable to see why there is such a low incentive to report possible fiscal evasion. Failure to provide the fiscal coupon or invoice at the purchase time represents possible fiscal evasion. The results of the answers are presented in Table 2.

**Table 2: Overview of the Level of Notification or Reporting for Possible Fiscal Evasion**  
(Source: Authors' calculation)

Question 10 (P10): How many times a year have you notified the institution (ATK or other tax collecting institution) about the cases when you were not offered a fiscal receipt or invoice when you bought?		
Answer	Number of Respondents	Percent
Never	189	86.7
1 to 3 times	20	9.2
3 to 5 times	7	3.2
5 to 10 times	0	0.0
Over 10 times	2	0.9
<b>TOTAL</b>	<b>217</b>	<b>100%</b>

To find the factors of why there is a low interest of consumers to help the state in collecting taxes, from the data collected from the questionnaire, there were found two correlative links, such as one is that consumers do not have information if the penalties are deserved for the evader, they also do not have information on whether the state budget is being spent correctly and transparently, therefore with these two factors consumers are not interested in notifying the tax administration about possible tax evasions. Second, there were presented as independent variables, which were tested statistically.

In order to find out what the consumer think about the level of intervention against those who commit tax evasion, answers were received from 217 respondents, of which 126, or 58.1%, say that they do not receive the appropriate intervention, 60 respondents or 27.6% do not know if they receive deserved punishment. In contrast, only 31, or 14.3%, say they received the deserved punishment (Table 3).

**Table 3: Reflection of the Perception of the Size of the Interactions (Source: Authors' calculation)**

Question 15 (P15): Do you think businesses or persons are sufficiently punished when it is discovered that they were not paying the correct taxes/taxes to the state?		
Answer	Number of Respondents	Percent
Not	126	58.10%
I do not know	60	27.6%
Yes	31	14.3%
<b>TOTAL</b>	<b>217</b>	<b>100.00%</b>

When we asked the respondents if the state budget is being spent appropriately and transparently, then for this question, we received answers from 216 respondents, of which 149 respondents, or 69%, said that the budget is not being spent appropriately. More than 49 respondents, or 22.7%, say they do not know about this, and only 18 respondents, or 8.3%, think the budget is being spent correctly (Table 4).

**Table 4: Overview of the Perception of State Budget Spending (Source: Authors' calculation)**

Question 18 (P18): Do you think the taxes and duties the state collects yearly are fully spent correctly?		
Answer	Number of Respondents	Percent
Not	149	69.00%
I do not know	49	22.70%
Yes	18	8.30%
<b>TOTAL</b>	<b>216</b>	<b>100.00%</b>

Also, to test the presented hypotheses, data were collected from the questionnaire. When given the opportunity, the respondents were asked how much they think businesses or people are ready to commit tax evasion. From the answers received, it is shown that out of 221 respondents who answered this question, 110, or 50.7%, answered that they are ready to cause avoidance at any moment when they are given the opportunity, up to 51 respondents, or 23.5 % expressed neutral. In comparison, 44 respondents, or 20.3%, expressed that businesses or people are not ready to cause avoidance, while 12 respondents, or 5.5%, expressed that they are not ready to cause avoidance (Table 5).

**Table 5: Reflection of the Perception of the Level of Readiness of Businesses/Persons to Commit Fiscal Evasion (Source: Authors' calculation)**

Question 15 (P15): Do you think businesses or people are willing to cause tax evasion whenever possible?		
Answer	Number of Respondents	Percent
Yes	110	50.70%
Neutral	51	23.50%
Slightly	44	20.30%
<b>TOTAL</b>	<b>221</b>	<b>100.00%</b>

To find factors or independent variables why there is a perception of this high level of readiness, the data collected from the questionnaire, there were found two correlative and statistically significant relationships, such as one is that consumers perceive that businesses/persons who commit tax evasion are not stigmatized enough, which as such is considered to be a moral punishment by society. The other perception by the consumer is the weak connection between the citizen and the state. Therefore with these two perceptions, businesses/persons made be ready to cause evasion at the first moment when were given the opportunity. Secondly, these are presented as independent variables tested statistically and have statistical significance.

In order to find out what the consumer thinks about the level of stigmatization towards avoidance described, you will find the answers as follows from 221 responses, of which 114 or 51.6% say that businesses or people who cause avoidance are a little stigmatized, 63 respondents or 28.5% say that they do not know about the level of stigmatization, 63 respondents or 28.9% say that it is not stigmatized at all, up to 10 respondents or 4.6% say that they are stigmatized enough (Table 6).

**Table 6: Reflection of the Perception of the Level of Stigmatized Subject or Persons who Cause Tax Evasion (Source: Authors' calculation)**

Question 20 (P20): Do you think that subjects or persons who cause tax evasion in Kosovo are stigmatized?		
Answer	Number of Respondents	Percent
Not stigmatized	114	51.6%
I do not know the level of stigmatization	63	28.5%
Slightly	44	19.90%
<b>TOTAL</b>	<b>221</b>	<b>100.00%</b>

When asked the respondents if they think that there is a relationship of cooperation between citizens and the state to fight tax evasion, there were received answers from 218 respondents for this question, of which 132 respondents, or 60.6%, expressed that there is little cooperation between citizens and the state to fight tax evasion, up to 45 respondents and 20.6% say that there is no cooperation at all, 27 respondents or 12.40% say that they do not know about the level of cooperation, up to 14 respondents or 6.4% think that there is cooperation enough between the citizen and the state in fighting fiscal evasion (Table 7).

**Table 7: Reflection of the Perception that the cooperation Between the State and Citizens against Fiscal Evasion (Source: Authors' calculation)**

Question 21 (P21): Do you think there is a cooperation between the citizen/consumer and the state in the common fight against fiscal evasion?		
Answer	Number of Respondents	Percent
Little cooperation between them	132	60.6%
There is no cooperation at all	45	20.6%

They do not know the level of cooperation	27	12.4%
There is cooperation between them	14	6.40%
<b>TOTAL</b>	<b>218</b>	<b>100.00%</b>

Up to the above, it was made a description of the results for each question posed, and at the same time, the answers from the respondents were presented in percentage. In the following, we can present a descriptive statistical analysis table, which includes the number of respondents, the statistical average, the standard deviation, and data distribution results through Skewness and Kurtosis (Table 8).

**Table 8: Descriptive Statistics (Source: Authors' calculation)**

Variable	N	Minimum	Maximum	Mean	Std. Deviation	Skewness		Kurtosis	
	Statistics	Statistics	Statistics	Statistics	Statistics	Statistics	Std. Error	Statistics	Std. Error
NjAT	214	1.0	5.0	1.336	.9187	2.802	.166	7.141	.331
HBXh	214	1.0	4.0	3.182	.9687	-.748	.166	-.764	.331
NDen	214	1.0	3.0	2.145	.5417	.095	.166	.164	.331
GMP	213	1.0	3.0	1.751	.9107	.514	.167	-1.604	.332
STIG	214	1.0	4.0	2.159	1.0628	.697	.166	-.722	.331
NBSh	214	1.0	4.0	2.037	.7682	.914	.166	.858	.331
Valid N (listwise)	213	1.0							

## Hypothesis Testing

### *Significance of the Correlation Coefficient*

Correlative and significant relationships between them can be seen from the correlation analysis. The notification from the consumer to the tax administration has a correlation with the improper spending of the budget with the coefficients  $r=-0.259^{**}$ , while the significance is  $p=0.000<0.01$ .

The notification from the consumer to the tax administration correlates with improper interactions with the coefficients  $r=-0.220^{**}$ , while the significance is  $p=0.001<0.01$ .

The degree to which people and businesses are prepared to elicit avoidance from the moment they are given a chance is correlated with how little stigmatization is directed at them using the coefficients  $r=-0.288^{**}$ . At the same time, the significance is  $p=0.000<0.01$ .

The level of readiness of businesses and persons to cause avoidance from the first moment they are given the opportunity correlates with the low level of cooperation between the citizen and the state to fight fiscal evasion. This relationship is presented in these coefficients  $r=-1.54^*$ , while significance  $p=0.024<0.05$ .

**Table 9: Correlation Matrix Table (Source: Authors' calculation)**

		Njata	GMP	laying out	HBxh	STIG	N.B
Njata	Pearson correlation	1	-.032	-.220**	-.259**	.012	.108
	Sig. (2-tailed)		.639	.001	.000	.858	.114
	N	214	214	214	214	214	214
GMP	Pearson correlation	-.032	1	.106	-.154*	-.288**	.030
	Sig. (2-tailed)	.639		.123	.024	.000	.663
	N	214	214	214	214	214	214
laying out	Pearson correlation	-.220**	.106	1	-.010	.170*	.285**
	Sig. (2-tailed)	.001	.123		.884	.013	.000
	N	214	214	214	214	214	214
HBxh	Pearson correlation	-.259**	.030	.285**	1	.234	-.024
	Sig. (2-tailed)	.000	.663	.000		.001	.723
	N	214	214	214	214	214	214
STIG	Pearson correlation	.012	-.288**	.170*	.123	1	
	Sig. (2-tailed)	.858	.000	.013	.073		.073
	N	214	214	214	214	214	214
NBSH	Pearson correlation	.108	-.154*	-.010	-.024	.234	1
	Sig. (2-tailed)	.114	.024	.884	.723	.001	
	N	214	214	214	214	214	214

\*\*Correlation is significant at the 0.01 level (2-tailed).

\*Correlation is significant at the 0.05 level (2-tailed).

## Linear Regression Analysis

As known, linear regression is the most basic and commonly used predictive analysis. Regression estimates describe data and explain the relationship between one dependent variable and two independent variables. Following is presented the regression equation:

$$Y_i = \beta_0 + \beta_1 x_1 + \dots + \beta_k x_k$$

Y1 = notification to the tax administration for possible tax evasion (TA)

X1 = Spending the state budget in the right way (HBxh)

X2 = Level of punishments deserved for evader (NDen)

Y2 = Business willingness not to pay taxes (GMP)

X1 = stigma for non-payment of taxes (STIG)

X2 = The level of cooperation between the citizen and the institution for combating fiscal evasion (NBSH).

## Regression Analysis

This section provides the outcomes of the variables' statistical analysis:

Y1 = notification to the tax administration for possible fiscal evasion (TA)

X1 = Spending the state budget in the right way (HBxh)

X2 = Level of punishments deserved for evader (NDen)

$Y1 (NJAT) = \beta_0 + \beta_1 HBxh + \beta_2 NDen + \varepsilon$

**Table 10: Model Summary (Source: Authors' calculation)**

Pattern	R	R Square	Adjusted R Square	Std. Error of the Estimate	Durbin-Watson
1	.300	0.090	.082	.8804	1,689

a. Predictors: (Constant), Budget expenditures, level of transitions.

Table 10 elements relevant for interpreting the results are R and R-Square. R-Value represents the correlation between the dependent variable and independent variables, and R-Square shows the total variation for the dependent variable that the independent variables could explain. In this case, R-value is 0.30, and the R-Square coefficient of determination is 0.09, or around 9% of the dependent variables' variations are explained through the variables of independence.

**Table 11: Regression Coefficients of the Independent Variables (Source: Authors' calculation)**

Pattern	Unstandardized Coefficients		Standardized Coefficients	t	Sig.	Collinearity Statistics	
	B	Std. Error	Beta			Tolerance	VIF
Constant	2.602	.283		9.191	.000		
HBXh	-.362	.116	-.213	-3.114	.002	.919	1.088
laying out	-.230	.099	-.159	-2.325	.021	.919	1.088

a. Dependent Variable: Number of notifications in the Tax Administration.

b. Predictors: (Constant), Budget expenditures, level of transactions.

To describe the result from the statistical testing, as referred to in Table 11, where the results of the two variables under consideration are reflected. The result shows a statistically significant impact between the number of notifications to the tax administration for possible evasion and the perception of the low level of penalties, where the coefficient of P-Value 0.021 is presented where  $p < 0.05$ . Many studies find that sanctions are effective in reducing fiscal evasion, and sanctions on taxpayers are more effective than sanctions on tax assistants in deterring tax evasion (Marchese 2020). Likewise, spending the budget properly as an independent variable was statistically significant with the dependent variable, which is the number of notifications to the tax administration for possible evasion. The result between these variables is 0.02, which also in this variable  $p < 0.05$ . High tax compliance will reduce rather than facilitate the growth of government spending (McKee 2020).

The results of collinearity diagnostics are  $0.20 < \text{tolerance} = 0.919$  and  $VIF = 1.088 < 5$ .



## Regression Analysis

The outcomes of the statistical analysis of the variables are presented in this section:

Y2 = Business willingness not to pay taxes (GMP)

X1 = stigma for non-payment of taxes (STIG)

X2 = The level of cooperation between the citizen and the institution for combating fiscal evasion (NBSH).

$$Y2 (GMP) = \beta_0 + \beta_1 STIG + \beta_2 NBSH + \varepsilon$$

**Table 12: Model Summary (Source: Authors' calculation)**

Pattern	R	R Square	Adjusted R Square	Std. Error of the Estimate	Durbin-Watson
1	.302 <sup>a</sup>	.091	.082	.9280	2.064

Predictors: (Constant), citizen-state cooperation, stigmatization.

R-Value represents the correlation between the dependent variable and independent variables, and R-Square shows the total variation for the dependent variable that the independent variables could explain. In this case, R-Value is 0.302, and the R-Square or coefficient of determination is 0.091; otherwise, around 9.10 % of the dependent variables' variations are explained through the variables of independence.

**Table 13: Regression Coefficients of the Independent Variables (Source: Authors' calculation)**

Pattern	Unstandardized Coefficients		Standardized Coefficients	t	Sig.	Collinearity Statistics	
	B	Std. Error	Beta			Tolerance	VIF
Constant	3.943	.202		19,481	.000		
STIG	-.243	.062	-.267	-3,950	.000	.945	1.058
NBSH	-.116	.085	-.092	-1.360	.175	.945	1.058

a. Dependent Variable: The willingness of the evader to cause evasion.

To describe the result from the statistical testing, refer to Table 13, which reflects the results of the two independent variables under consideration, one of which is stigmatization, and the other independent variable is the level of state-citizen cooperation in fighting tax evasion together. The statistical analysis shows a statistically significant result between the dependent variable, the willingness to commit evasion, and the independent variable, the stigmatization of those who commit evasion. The P-Value coefficient of 0.021, with a value of 0.05, is shown.

Stigma can restrain tax avoidance and tax evasion (Hamamur 2021). The other independent variable concerning the dependent variable was statistically insignificant since the result between these variables is the coefficient P-Values=0.175, greater than the value of  $\alpha$ , which in our case was determined  $\alpha=0.05$ ,  $p>0.05$ . Therefore, the independent variable presented, state-citizen cooperation, has not significantly impacted fiscal evasion. Results of collinearity diagnostics are  $0.20 < \text{tolerance} = 0.945$  and  $VIF = 1.058 < 5$ .

In this research, the respondents are asked to give their opinion on how or what to improve tax compliance. In the following, we have summarized the suggestions, comments, and recommendations with common elements. Therefore, what was extracted from the discussion, summarized to improve tax compliance, was given as it is necessary to improve the controls, increase the number of controls, increase the number of tax inspectors, the professionalism of the inspectors, the fight against corruption within the tax collection institutions, harsher punishments, citizen-state cooperation, greater awareness of citizens through campaigns different, faster reaction of the inspectors after the notification from the citizens, stimulation/incitement of the citizen for the collection of fiscal coupons, referring to the reward that has been the earliest collection of coupons set by the state. The spending budget should be more transparent and spend more in the direction of supporting the citizen, providing the state with fiscal cash registers for all businesses, keeping persons anonymous, notifying fiscal evasion, punishment for corrupt persons, holding inspectors accountable for their performance at work, unannounced inspections of businesses, changing fiscal policies, changing the approach of tax inspectors, lowering taxes for newly established businesses, reducing cash payments as much as possible, an official with integrity who lead the tax collection institutions.

## CONCLUSION

From the research that was accomplished on this subject, in addition to others that were described above, there are drawn conclusions that are also supported by statistical results, which we will describe as follows: citizens as consumers, regardless of knowing taxes and their role in supporting the state for tax collection, they do not show great interest in playing this powerful role. This shows that most of them have never notified the tax collection authorities. They do not insist on receiving the fiscal coupon or purchase invoice when the seller does not offer them.

To clarify this situation, where at the same time, the consumer, as a citizen of the state, on the one hand, has sufficient knowledge about his role in collecting taxes for the state. On the other hand, they are not ready to play their role. The essential purpose, in this case, is to bring out or understand the citizen/consumer's lack of will or unwillingness of the citizen/consumer to play his powerful role in collecting taxes and other taxes. To explain this, lack of will or motivation is identified as the main determinant that is also significant from the statistical analysis results.

Citizens, as consumers, believe that tax and tax evaders are not receiving the punishment they deserve in proportion to the evasion they cause; therefore, they are not interested in notifying the tax collection authorities of possible tax evasion.

Citizens as consumers believe that the budget raised by taxes is not being fully spent properly, which can affect their low motivation to play their powerful role.

Citizens as consumers believe that tax and tax evaders are not stigmatized by society, which means they do not experience moral punishment. Therefore this stimulates businesses to continue tax evasion.

Citizens as consumers believe that there is no strong connection between the state and citizens to fight tax evasion together; this allows many businesses to commit tax evasion.

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# PROCESS TRACING AND PROFESSIONALIZATION OF POLITICAL CAMPAIGNS

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**Abstract:** Recent years have witnessed a significant inner transformation among political parties in both developed and developing democracies of the world. Different factors, such as changes in the structure of the media environment owing to the technological boom in the last two decades and changes in voting behavior, led to the transformation of the political parties in different democracies worldwide. Therefore, studying the patterns of this transformation has become an integral part of the current political science research. Early studies have demonstrated the indexes based on professionalization. However, limited studies have tried to examine the process of transformation relating to professionalization and are almost missing from the studies based on non-western democracies like India. Therefore, against this backdrop, this study tries to expand the literature by providing a theoretical framework consisting of causal mechanisms which would explain the process of professionalization of campaigns with special reference to Indian elections through the theory testing method of process tracing. The framework has been provided in a series of causal mechanisms to answer how the considered individual variables react when they come in contact. This paper concludes by justifying the conceptual framework of professionalization.

**Keywords:** Professionalization; Political Parties; Election Campaigns; Process Tracing; Democracy

## INTRODUCTION

Process tracing is a qualitative research method specifically used to trace causal mechanisms using empirical evidence from a detailed case analysis. Process tracing attempts to unpack the causal chain to examine how or whether a possible cause affects specified changes or sets of changes (Anguko 2019). This is done by setting up several tests to scrutinize the validity of the evidence and connecting it to the case study to make generalizable assumptions (Collier 2011). Therefore, one of the main features of process tracing lies in developing and testing possible ideas and shedding light on the factors that could be responsible for changes to a particular phenomenon (Collier 2011).

Process tracing can study only a single or a few cases (Anguko 2019). When a case requires a deeper explanation, process tracing could be a reliable method to study case variations to draw a causal inference of the phenomenon (Anguko 2019). The significance of process tracing is that it churns out the causal mechanism at play in a real-world case (Anguko 2019).

Process tracing is generally divided into theory testing, theory building, and outcome process tracing (Beach 2017). Theory building can be considered as the first step where the researcher knows that there is a connection between a dependent and independent variable and goes in search of clues to formulate a causal mechanism between the dependent and



independent variable by building a theoretical foundation based on similar cases around the world (Beach 2017). It is also known as soaking and probing (Beach 2017). On the other hand, theory testing means that a theory has been developed. The possible causal mechanisms between dependent and independent variables have been identified. The researcher's job is to test it and empirically validate whether the theory's explanations are applicable in the present case or if there are other alternative explanations (Beach 2017). The third category of process tracing is known as outcome process tracing. It is a repetitive research strategy. While the other two types concern theorizing and testing causal mechanisms, this method examines a more complex web of case-specific mechanisms to engender outcomes (Beach 2017).

This study will concentrate only on the theory-testing model of process tracing. Moreover, the study will focus on a particular theory to justify how the theory testing model of process tracing can be applied to that theory. Evidence from the literature states that using process tracing to the theory of professionalization about election campaigns could provide a new dimension to political communication studies (Karpf 2015; Ostrá 2021; Strömbäck 2009). Therefore, the study will first seek to explain the contribution of process tracing as discussed in the literature. Then it will take on the theory of professionalization to provide a roadmap analysis for professionalized election campaigns. Thus, there are two key questions:

- What are the contributions of process tracing to the literature about the professionalization of election campaigns?
- How can the theory testing method of process tracing be situated *vis-a-vis* the study of the professionalization of election campaigns with special reference to Indian general elections in the last decade?

## HISTORY OF PROCESS TRACING

Alexander George first conceptualized process tracing as a data interpretation method that became increasingly popular in case study research (Trampusch and Palier 2016, 437; Vennesson 2008). According to George, there was a need for a research strategy to examine if the correlation among different variables empirically discovered through statistical procedures has any causal links (Trampusch and Palier 2016). Hence, he developed a procedure known as process tracing that will track down the steps in a causal process proceeding toward the outcome of a dependent variable of a specific case in a particular historical context (Trampusch and Palier 2016). Several other methods, such as analytical narratives or systematic process analysis, are often debated to have close connections with process tracing (Vennesson 2008).

Nevertheless, process tracing strongly emphasizes key variables, whereas analytical narratives emphasize major actors, their strategies, etc., creating a clear distinction between the two (Trampusch and Palier 2016, 445).

Over the years, process tracing has become popular, and researchers worldwide can be seen using it in different manners (Trampusch and Palier 2016). While some researchers use process tracing to identify the causal mechanism and show a causal link between the dependent and independent variables, others use it to demonstrate the temporal sequences of variables (Trampusch and Palier 2016).

## METHODOLOGICAL DEBATES ON PROCESS TRACING

Most researchers today agree that process tracing is a method for tracing causal and temporal mechanisms (Trampusch and Palier 2016). This method focuses on the relationship between *x*, *y*, and beyond. According to Bennet and Checkel, “process tracing is a key technique for capturing causal mechanisms in action” (Trampusch and Palier 2016, 438). Alexander George, who brought the concept of process tracing to the political science discipline, defines it as a method that could establish the causality among the correlated variables by systematically analyzing the relationship among variables (Venesson 2008). Notably, researchers using process tracing are not concerned with detailed estimates of particular causes but instead focus on the underlying process which links variables that affect the outcome of a particular case (Trampusch and Palier 2016).

Moreover, while analyzing the causal process, researchers include two spectra. The first step is to investigate the effects of variables and then to develop a causal chain based on the mechanisms and their effects (Beach 2017; Trampusch and Palier 2016; Vennesson 2008). Since the causal process is complex, studying the temporal and spatial scope conditions is important to develop the mechanisms for the underlying phenomenon (Trampusch and Palier 2016).

Moreover, literature on process tracing also differs in terms of ontological paradigm, especially in analyzing causal mechanisms and their operation to causal inferences. Literature provides evidence of two ontologies based on probabilistic and deterministic notions of causality (Trampusch and Palier 2016). The probabilistic conception emphasizes scope conditions and the outcome in the mechanism analysis and assumes that some mechanisms might have different results as there are variations in operationalizing these mechanisms (Mayntz 2004; Trampusch and Palier 2016). At the same time, the deterministic conception emphasizes the static notion of causal mechanism, i.e., to examine ‘what is constant in a mechanism that links *X* and *Y*’ (Beach 2017; Trampusch and Palier 2016). Hence it can be argued that while the probabilistic notion is dynamic, the deterministic notion tends to be more static.

Finally, the literature also differs regarding the method’s applicability to the theory. It is divided into two sets; inductive contributions try to explore the theories and hence focus on building theories. On the other hand, deductive contributions focus on examining the theory’s validity by testing it in a particular case (Beach 2017; Trampusch and Palier 2016). While the former tries to locate the causal links and mechanisms, the latter tries to explore the theory’s validity with empirical case analysis (Beach 2017; Trampusch and Palier 2016). However, this differentiation between deductive and inductive approaches has two important significances.

Firstly process tracing becomes the only case study method within political science that has the potential to construct as well as test theories (Trampusch and Palier 2016). Secondly, process tracing tries to connect to a quantitative approach, thereby building an indispensable bridge connecting both qualitative and quantitative paradigms (Trampusch and Palier 2016). Hence it can be argued that process tracing contains elements of both positivist and interpretive paradigms.

## POSITIVIST AND INTERPRETIVIST PERSPECTIVES OF PROCESS TRACING

The Positivist paradigm of process tracing aims to form and examine the connection among different variables (Vennesson 2008). By using historical documents, archives, interview recordings, transcripts, and various other sources, the researcher explores the causal chain of the theory that he found in other cases that can be applied to the present study or not (Beach 2017; Vennesson 2008). Hence, the investigator can check the effectiveness of the indicators in measuring dependent and independent variables (Vennesson 2008). Moreover, the researcher also critically examines the validity and reliability of the data and its representativeness to check for the relative importance of certain possible causal factors (Vennesson 2008). Therefore, this paradigm focuses on the researcher's aim to learn and develop a causal chain where a particular factor could be traced and connected to another factor to establish a causal chain.

However, the interpretive paradigm of process tracing emphasizes the ways and context in which the causal link is visible and how it occurred (Beach 2017; Vennesson 2008). Here the focus is more on the "how" question than the "what" question. Therefore, process tracing from an interpretive sense can explore the reasons an actor presents about his actions and behavior and further examine the link between belief and behaviors (Vennesson 2008). Thus, combining the aspects of both paradigms, it can be argued that process tracing helps the investigators unveil directly or indirectly the mechanisms that actors want to know and compute (Vennesson 2008). The next section will briefly discuss the theory-testing model of process tracing.

## THEORY TESTING MODEL OF PROCESS TRACING

As discussed earlier, the literature on process tracing differs in its applicability to the theory. Hence process tracing is divided into two segments deductive mode and inductive mode. Inductive mode deals with the theory-building segment of process tracing; however, deductive mode deals with theory testing segment of process tracing (Trampusch and Palier 2016). The present study will only focus on the process tracing theory testing segment.

According to Derek Beach's theory testing model is also known as "process verification", "systematic process analysis", "congruence model", and "mechanism tracing" (Trampusch and Palier 2016, 445). As discussed earlier, here, the researcher gathers evidence and then evaluates whether the empirical evidence aligns with the theoretical explanations; thus, based on the empirical shreds of evidence, researchers either confirm or reject the hypothesis (Beach 2017).

However, deductive segments must be differentiated from the analytical narratives as the process seems similar (Beach 2017). Analytical narratives are mainly used to show the extent to which micro-foundational theories are valid through a repetitive process that oscillates back and forth between observations and specific theories in order to refine further the existing theory (Beach 2017; Beach and Pedersen 2013, 14-15). However, those involved in process tracing are curious to analyze the causal mechanism dynamics, what constitutes the changes, and the feedback processes (Beach 2017; Beach and Pedersen 2013, 14-15). Experts of process tracing may sometimes use rival theories to distinguish them from each other instead of focusing on one specific theory.

According to most recent literature on process tracing, the theory testing model uses Bayesian inference logic (Beach 2017; Trampusch and Palier 2016). When employing Bayesian statistics, process tracing takes the deterministic role in which all the parts of the causal mechanism are identified as necessary to test theories and draw causal inferences; thus, Bayesian inference helps predict certain unique causal processes (Beach 2017; Trampusch and Palier 2016). Part-by-part discussion helps to find the empirical evidence that should be expected if the mechanism exists in other cases.

The theory testing model of process tracing becomes relevant to test an established mechanism in a small N case study (Beach 2017). Literature on professional election campaigns has widely used this method to examine whether the indicators of professional election campaigns are empirically valid in a particular country (Ostrá 2021; Strömbäck 2009). Hence, the next section of the article will discuss how the theory testing model can be applied to the theory of professionalized election campaigns by particularly focusing on the Indian elections.

## PROFESSIONALIZATION OF ELECTION CAMPAIGNS

The professionalization of political parties has been an integral part of electoral campaigns. According to Strömbäck, party professionalization is “about expertise and the use of specialized expertise in campaign-related activities” (Ostrá 2021, 9). According to Lilleker and Nergine, professionalization as a concept has become a norm which explains the growth of political campaigns and communication (Ostrá 2021). However, researchers worldwide also argued that the type of professionalization changes depending on the geographical location, types of parties, etc. (Ostrá 2021). Therefore, there is a need to measure the level of professionalization. Hence, different models based on certain types of indicators were introduced by several researchers.

The first index was developed by Gibson and Rommel and introduced in 2009. They created an additive index known as the CAMRROF index (Gibson and Römmele 2009; Ostrá 2021). This was divided into two categories subjective and objective. The objective spectrum depends on direct mail, telemarketing, and internal communication systems. In contrast, the subjective spectrum depends on using computer databases, PR consultants, use of polls, etc. these indicators were measured specifically by analyzing the election survey data, and the resultant output was given a range from 0-30 (Gibson and Römmele 2009; Ostrá 2021). Over the years, various other models were discovered by researchers. For instance, Strömbäck 2009 provided a modified version of the model mentioned above by adding two indicators first is based on the importance of focused groups, and the second one reflects the strengths as well as weaknesses of the political parties (Ostrá 2021; Strömbäck 2009). The second indicator is important as it helps the party retrospectively and works on their weakness (Ostrá 2021). His model has 11 indicators, and he provided his model by observing the Swedish elections (Ostrá 2021; Strömbäck 2009).

Tenscher and Mykkanen provided another model for professionalizing political campaigns (Ostrá 2021; Tenscher et al. 2016). While previous models focused on only campaign structure, this model is an improvement over other models as it provides a two-dimensional model focussing on campaign structure as well as strategies, i.e., concentrates upon the changes

in the management of campaigns as well as the strategies for political parties (Tenscher et al. 2016). They justified their model by gathering certain empirical observations. It has 15 indicators and is considered a party-centered model (Ostrá 2021; Tenscher et al. 2016).

However, the latest one was presented by Restrepo-Echawarria, Rodriguez-Diaz, and Castromil in 2018 (Ostrá 2021). It is another two-dimensional index, the INPROCO index comprising the organizational and communication spectrum. While the former could be measured using 13 indicators, the latter could be measured using 14 (Ostrá 2021). All these indicators were derived from previous studies by Plasser, Mancini, Rommel, and Gibson (Ostrá 2021).

The literature so far has demonstrated the indexes based on professionalization. However, only a few pieces of literature have tried to construct a causal chain based on the professionalization of election campaigns. Therefore, this study will try to expand the literature by providing a theoretical framework consisting of causal mechanisms which would explain the process of professionalization of campaigns with special reference to Indian elections.

There have been few studies on professionalized election campaigns in western democracies (Gibson and Römmele 2009; Strömbäck 2009; Tenscher et al. 2016). However, the same has not been studied thoroughly in non-western democracies like India, which is the largest democracy in the world. Hence, the present study will concentrate on the Indian election campaign due to its huge cultural and population diversity.

This study will try to build a causal model of professionalization based on the theory-testing model of process tracing. The model will be constructed based on the literature and gathering evidence by studying the Bharatiya Janata Party (BJP) electoral journey over the last few decades.

The operationalization of causal mechanisms in the present study has been firmly theorized in the literature on the professionalization and transformation of political parties. Gibson and Rommel also presented a causal model of parties' professionalization and measuring the degrees of professionalization (Gibson and Römmele 2009). According to their model, political parties play a significant role in their transformation. They took inferences from the integrated party change theory by Harmel and Janda in order to make three specific presumptions:

- First, every party has its own primary goal.
- Secondly, the most significant transformation in a party could be due to some external shock.
- External shocks act as a medium that could directly affect the party's primary goal.

The roots of the professionalization of campaigns could be found in the social changes within the party (Ostrá 2021). Social changes could occur due to the party's ideological shift or be based on societal modernization (Ostrá 2021). These could be further categorized into a decline in voter turnout, a decrease in focus on economic and social ideologies, a decrease in interest in political party membership, the performance of the present ruling party, and a decline in the popularity of the incumbent party. These categories are drawn from the literature on Indian elections, collectively known as environmental factors (Chhibber and Verma 2014; Singh

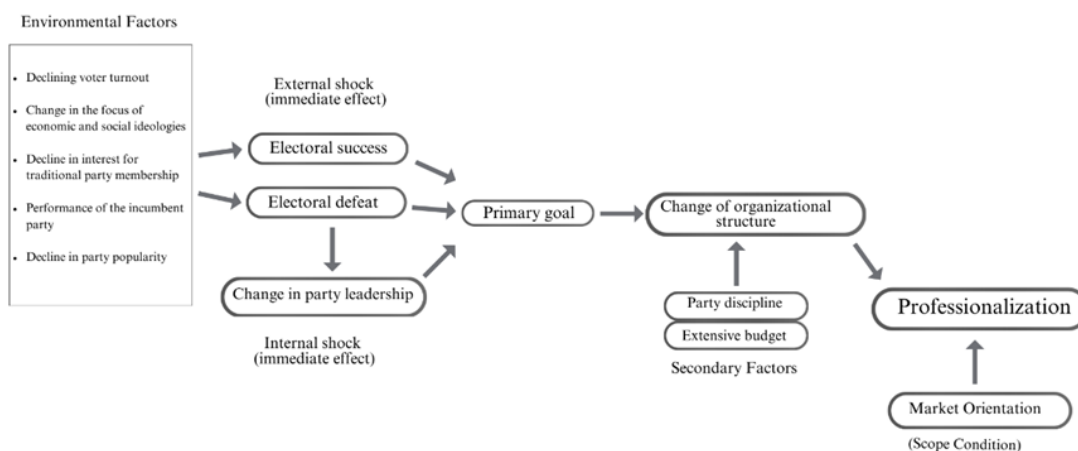
2013; Verma 2019). These factors are long-term factors that affect in the form of external shock resulting in either electoral loss or electoral success.

Literature also argues that parties tend to change their leadership whenever there is electoral defeat, thus facilitating internal shock. Therefore, when such changes occur, political parties adopt new marketing and political branding techniques (Ostrá 2021). According to Gibson and Rommel, new techniques are adopted solely for vote maximization (Gibson and Römmele 2009; Ostrá 2021). They also provided certain organizational features which could play an important role in political branding and vote maximization (Gibson and Römmele 2009; Ostrá 2021). According to the causal mechanism of the study, the first feature is related to the availability of resources and materials required for branding. Secondly, a systematic hierarchical structure of the party is necessary to operationalize the changes needed for professionalization.

However, market orientations are considered tools and expertise to describe a particular type of activity. The literature on professionalization has mixed views on using marketing orientation as a causal factor toward professionalization. While some authors (Kumar and Dhamija 2017; Kumar 2022) argued that professionalization should not be confused with marketing as the latter concentrates not just on marketing techniques but also its principles and procedures. Others (Jaffrelot and Verniers 2020; Neyazi, Kumar, and Semetko 2016) believed that marketing models complement professionalized campaigns. Hence, the present study will include market orientation under scope conditions. The remaining features of formal organizational structure, such as extensive budget and the party's internal discipline, are included as the secondary factors giving rise to organizational change of the party structure, thus contributing to the degree of professionalization.

Therefore, based on the above literature, the present study develops a causal mechanism of the professionalized political campaign. The causal mechanism states that certain long-term factors in the form of a decline in voter turnout, a change in focus on economic and social ideologies, a decrease in interest in political party membership, the performance of the present ruling party, and a decline in popularity of the incumbent party give rises to external shock in the form of electoral defeat or electoral success. When it is in the form of electoral defeat, it will give rise to internal shock in the form of changing leadership of the party, which ultimately affects the primary goal. Furthermore, a change in primary goals eventually leads to a change in organizational structure determined by certain secondary factors such as party discipline and party budget, thus creating a background for professional political parties. An estimated model of a causal mechanism using evidence from literature has been presented in Figure 1 (Ostrá 2021; Strömbäck 2009).





**Figure 1: Proposed Causal Mechanism of Professionalization of Political Campaign**  
(Source: Author's research)

## Operationalization of the Evidence

Process tracing has been commonly used by researchers when it comes to deriving causal mechanisms (Beach 2017; Ostrá 2021). Therefore, if process tracing has been adopted for a particular research, the first phase is the conceptualization phase. After that, the operationalization phase occurs, where all the types of evidence need to be properly determined and clearly defined (Beach 2017; Ostrá 2021). This is important because it helps to indicate the presence of a causal mechanism in a particular case. As argued by Beach, if actual evidence that connects each part of the mechanism could be found and matches the prescribed propositions about evidence, then it can be inferred that the hypothesized causal mechanism is present in the case based on Bayesian logic (Ostrá 2021, 16). Certain examples will support the evidence with special reference to the Indian election, particularly BJP's journey from the 2004-2014 elections.

Declining voter turnout is one of the significant factors that can significantly affect the party's performance. Therefore, the party's potential to mobilize its voters through campaigns becomes a major issue that could harm its overall performance (Beach 2017; Ostrá 2021). If the party is incapable of mobilizing the voters, it will result in declining voter turnout, which could negatively affect the overall results of the election. Traditionally mobilization occurred through networking and contacts (Ostrá 2021). However, in modern times, television, newspaper, and the internet add a new dimension where parties use these platforms to reach the general masses.

Secondly, party ideologies also play an important role in shaping election outcomes. It can often be linked to declining voter turnout. If the party's ideology does not match the voter's interest, parties can shift their ideologies, significantly impacting the final election outcome. For instance, in 2009, BJP's ideology concentrated on social conservatives. It was mostly known as a Hindu nationalist party, owing to some anti-Muslim programs in BJP-governed states. As a result, there was a declining voter turnout as people belonging to only that particular group supported BJP (Chhibber and Verma 2014; Singh 2013).

Moreover, BJP produced a pathetic performance in 2009 as the share of votes went below what was secured in 1991 and lost 3.3% of the valid votes compared to the 2004 general

elections (Singh 2013). However, by 2014 BJP managed to draw a middle ground by shifting its ideology, thus pooling both socially conservative and those who believed in a liberalized economy (Chhibber and Verma 2014). Moreover, BJP also systematically targeted the rising middle class, forming the country's greater vote share (Chhibber and Verma 2014). Hence, in 2014 BJP's voter turnout was significantly high compared to what it was in 2009. Therefore, these two environmental factors play a significant role in developing a professionalized orientation for the party's political campaign. Voter turnout could be measured using voter data and changing ideologies using a model provided by Jackel to measure party ideologies (Jäckle 2009). Jäckle provided a model where he introduced 13 categories extracted by combining four different types of methods, i.e., classification of party families, surveys of general masses and experts, apart from hand-coded and automated text analysis approaches, and finally behavioral measures (Jäckle 2009). Some categories are social liberalism, welfare vs. taxes, and deregulation. Therefore, based on these indicators, parties' positions could be measured (Jäckle 2009).

A decline in party membership is another important factor that could create a distance among the parties which are in a coalition. This usually happens when parties directly shift their policies to attract many members from different parties to form a coalition. This, however, can lead to a negative outcome, such as declining voter turnout (Ostrá 2021). This could be measured using data on the number of members of political parties and the number of coalition parties (Ostrá 2021). Evidence of such factors could be found in BJP's electoral journey, specifically from 1999 to its defeat in 2004 (Singh 2013). In 1999 BJP formed the government with the help of 24 other parties, known as the National Democratic Alliance (Singh 2013). However, after forming the government, the BJP-led NDA faced many problems from other coalition parties and within BJP. Maintaining different ideological perspectives was not easy; therefore, halfway through its term BJP appeared extremely fragile as many coalition member parties, such as Trinamool Congress, J&K National Conference, etc., came out of the coalition seeing their ideologies and interest best fulfilled outside the coalition (Singh 2013). As a result, this coalition became unstable and eventually led to their defeat in 2004. The alliance of 24 parties in 1999 decreased from 22 parties in 2004 to about 7 in 2009 (Singh 2013). This can also be associated with the ideological position as BJP came to be known as the Hindu nationalist party many parties in the coalition feared that they will lose the Muslim voters which formed a large base of their vote share, especially in the southern parts of India as a result of which they left the coalition (Singh 2013).

Other environmental factors, like the incumbent party's performance and the decline in party popularity, go hand in hand. As the ruling party keeps winning election after election, it is evident that the opposition will certainly lose its popularity with electoral defeat in each election cycle. A decline in party popularity could be measured using data on voter turnout and the election survey data sets. The incumbent party's performance could assess the policies introduced by the ruling party through the election survey data set. Evidence of these environmental factors could be found in the Indian election, where at one point, especially after the 2004 elections, BJP lost the entire plot leading to their defeat in 2009, where vote share also declined, and several parties stepped out of the coalition (Singh 2013). As a result of which, many scholars termed the BJP as a 'dying party'. However, after the 2009 elections, the ruling

party Congress faced many corruption charges, including some renowned cabinet ministers (Chhibber and Verma 2014). This came as a ray of hope for the BJP to start fresh for the 2014 elections.

### **Internal and External shock**

The causal mechanism clearly defines the internal and external shock. If a party in question loses in the previous election, the outcome is electoral defeat, and if it manages to win, it results in electoral success. The causal mechanism will only consider national-level elections to make the election types uniform. Furthermore, this could be assessed by going through polls and election results. For instance, these primary factors could be seen in Indian elections. BJP's prime ministerial candidate for the 2004 elections was Atal Viharee Bajpayee, whom LK Advani replaced in 2009, and Narendra Modi in 2014 (Chhibber and Verma 2014; Singh 2013). The party concentrated on changing leadership each time after facing electoral defeat. However, after the 2009 election, they changed their strategies and tried to brand Modi's name since he had had a significant impact, especially in his state of Gujarat (Chhibber and Verma 2014).

### **The Primary Goal and Organisational Structure**

Evaluating the changes in the primary goal is a complex issue. At first political parties generally stick to their ideologies. However, after facing electoral defeat, political parties slowly restructure their goals to suit the public interest. Evaluating the primary goal is solely based on the matter of interpretation by the researcher, as no standardized models exist and could be measured using public statements by party representatives or internal materials of the party. An instance of change in primary goal could be found in BJP's electoral journey after two consecutive defeats in 2004 and 2009 (Singh 2013). BJP in 2009 focused only on criticizing Congress's policies and setting up negative agendas. However, in the wake up of the 2014 elections, BJP could read the political scenario and framed agendas at the national level based on good governance and economic development (Bajaj 2017). Their agendas were in response to the incumbent party's corrupt practices, thus trying to portray themselves as the harbinger of change and an image of a corruption-free India if the party comes to power (Bajaj 2017).

The organizational structure is another important aspect of the causal mechanism. This aspect also depends on the researcher's subjectivity. However, the researcher should generally focus on certain factors, such as clearly defined roles for each party member, streamlining the decision-making structure, centralization, etc. (Ostrá 2021). This could be assessed using internal materials of the party, such as party statutes. Moreover, change in the organizational structure is also led by certain secondary factors such as party discipline and extensive budget. Party discipline can be linked to organizational structure as a disciplined party with clearly defined roles has a strong organizational structure compared to a party where roles are not defined clearly (Ostrá 2021). Party discipline could be measured using party documents, interviews with party members, etc. Another factor associated with the organizational structure is the party budget, which is how much a party has spent on election campaigns (Ostrá 2021). It could be measured by comparing its budget expenditure in two successive elections (Ostrá 2021).

An instance of this could be found in BJP's party structure after the defeat of the 2009 elections. It has a strictly hierarchical and disciplined structure where each segment has clearly defined rules. Moreover, the party introduced an IT cell in 2014 whose sole responsibility is to look after the election campaigns (Bajaj 2017). The IT cell is structured in such a way that it has its roots at the grassroots level, similar to the organizational structure of the BJP. The IT cell of BJP, during the 2014 elections, tried to attract the youth and first-time voters by using social media platforms like Twitter, Facebook, etc. (Bajaj 2017). They framed agendas at the national level based on good governance and economic development (Bajaj 2017). Therefore, by studying the population structure, it used an information control tweet that tries to divert users' attention to a particular type of tweet that the party wants its public to look at (Bajaj 2017). This type of tweet has a positive effect on the election outcome.

Moreover, the party invested heavily in social media platforms compared to the 2009 elections (Jaffrelot 2015). This new strategy comprising of change in organizational structure coupled with a disciplined orientation and extensive budget led to a successful election campaign in 2014 (Jaffrelot 2015). The organizational structure of the BJP is depicted in Figure 2.



**Figure 2: BJP's Organisational Structure**  
(Source: Organisation of the Bharatiya Janata Party 2023)

## Scope Condition

Market orientation comes under scope conditions and is very closely related to professional political campaigns. It is termed as tools and expertise to describe a particular activity. It could be measured using the index provided by Less and Marshment in 2001 (Ostrá 2021). However, it is included under scope conditions based on the debates about political marketing in campaigns, specifically in India. According to some scholars like Kumar, political marketing should not be confused with professionalization as professionalization includes only marketing strategies; however, political marketing also includes marketing principles as well as procedures along with strategies (Kumar and Dhamija 2017; Kumar 2022).

On the other hand, scholars like Jafferlot argued that political marketing is an important aspect of political campaigns and could be certainly linked to the party's organizational structure (Jaffrelot and Verniers 2020; Neyazi, Kumar, and Semetko 2016). For instance, BJP in 2019 used the Hollywood movie Avengers poster and portrayed Modi as the nation's leading hero and protector. Such marketing techniques targeted young voters who could relate these political leaders to the movie characters (Jaffrelot and Verniers 2020).

## CONCLUSION

The primary goal of this paper was to design a conceptual framework for the professionalization of election campaigns. This article tries to shed light and extend its understanding of a wide range of literature on the complex structure within political parties, which results in the professionalization of election campaigns. The framework has been provided in a series of causal mechanisms to answer how the considered individual variables react when they come in contact. The confidence of the causal model in the study could be set high by collecting the evidence and assessing the inferential weight of the evidence by conducting four tests provided in the literature.

The process tracing method was chosen for the study because it is considered one of the effective methods to study one single case or studies with a small number of N. Primary aim of this approach is to trace conditions of causality, prescribed settings, and finally, mechanisms leading to the emergence of a certain outcome. In this case, the theory testing model of process tracing has been employed as the study presents a causal mechanism. A theory has been deduced from current literature and tested by providing operationalized evidence.

However, process tracing also has certain limitations. The first is related to confirmation bias, where the researcher might find information that supports their way of thinking and hence could skip the other types of information that could potentially contradict his/her belief (Vennesson 2008). This can have a serious impact on the comprehensive research report. However, such problems can be overcome by considering alternative explanations that could lead to the final output based on the researcher's interest level (Vennesson 2008). Moreover, accounting for alternative explanations can lead to counterfactuals, which are a powerful tool against pre-existing theories (Vennesson 2008). Another potential limitation of process tracing is that the causal mechanism through process tracing can have high confidence only when a clear causal path exists between the causes and the observed outcomes at the appropriate level of analysis, explicitly defined by the theory testing model of process tracing (Bennett and George 1997). Hence, any negative evidence related to an intervening variable could seriously impact the hypothesized causal mechanism that relies solely on the causal pathway (Bennett and George 1997). Moreover, another potential problem is directed toward theories that do not always predict and explain all steps in a causal process, especially regarding complex cases (Bennett and George 1997). Therefore, if data related to certain evidence of the studied case is unavailable or if the theories could not properly explain the steps of the causal mechanism then the process verification can give rise only to certain provisional conclusions (Bennett and George 1997).

Nevertheless, process tracing is one of the most effective measures for unpacking the imaginary black box and identifying a causal mechanism inside the box. It helps the researcher to develop a strong conclusion about causal processes (Bennett and George 1997). As process tracing can follow the position and action of the actors, it can unravel the causal mechanism (Trampusch and Palier 2016). Hence it is considered one of the most common and valuable methods in social science research. Additionally, it improves Mill's comparison method and can be applied to reduce the risk of inferential mistakes that this method creates (Bennett and George 1997). The sole method of observation that may infer causal relationships beyond covariation is process tracing, which is the most significant (Bennett and George 1997).



## COMPLIANCE WITH ETHICAL STANDARDS

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# EXAMINATION OF DECISION-MAKING STRUCTURES' PERCEPTIONS OF COMPONENTS ON THE INFLUENCES OF SME SUCCESS

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**Abstract:** *Small and medium-sized enterprises (SMEs) have succeeded in being the main and dynamic pillar of national and international economies. Education and work experience is essential in increasing SMEs' efficiency and competitiveness. The changing business environment has created fierce competitiveness among SMEs, requiring active interaction between managers/owners and stakeholders. As a result, this study aims to explore the influence of education, experience, using a business plan, and barriers on the success of small and medium-sized businesses. This research employed an online questionnaire for scientific research. Through ordered logistic modeling, we observed 336 answers from businesses using the qualitative approach. The study's findings reveal that education and work experience have a statistically favorable influence on the performance of SMEs, whereas barriers have a substantial adverse influence. Findings on barriers are noteworthy in the context of this study since the governing institutions throughout the pandemic and later situations experimented with the measures adopted. The study also benefits SMEs and legislation authorities in understanding the critical concerns that are perceived as barriers to the growth and expansion of SMEs, resulting in the creation of even more sophisticated infrastructures to support sustainable development.*

**Keywords:** *SME Performance; Education; Experiences; Business Plan; Obstacles*

## INTRODUCTION

SME is a prominent issue for discussion worldwide, particularly in European countries. It drives the economic growth of most economies and overcomes unemployment concerns. SME tendencies have continuously increased globally in recent decades. Numerous SME entrepreneurs would prefer to involve in this type of business since an SME may be started with a modest investment (Lim and Teoh 2021). To measure the economic development of a country, the number of SMEs is often taken as an indicator and priority of any economy, knowing that they employ the largest number of all employees. Therefore their importance is very high. Our country went through difficult post-war periods, which meant that for two decades, we still did not have genuine economic policies focusing on facilities and establishing better environments for doing business. Therefore, generating jobs does not mean investing large sums of money in building roads or facilities but in policies that inspire young entrepreneurs to turn their ideas into projects. Therefore, it is crucial to focus on creating a favorable environment for existing local and start-up businesses.

To develop appropriate innovation capabilities, SMEs should seek relevant information and expertise that can be used to enhance their competitive offers in their chosen sectors and

marketplaces. Therefore, as a result, an active and continuous investigation will provide the opportunity to improve creative performance even more (Ignas 2012). The contribution of the SME sector as a contributor to economic advancement is now universally recognized; however, it should be noted that in Kosovo, more concentration is placed on SME performance in the market, and very little has been studied on the influence of education on the consequences of SMEs (Williams and Krasniqi 2018).

The success of SME owners and managers is critical to Kosovo's and other countries economic and social development. This leadership organization can boost SMEs if they have important components such as education and expertise in the SME field. The researchers, Latifi-Mustafa and Havolli (2020), demonstrate that enterprises in any structured form should be devoted to the abilities of the people they employ to encourage them to demonstrate their knowledge, skills, and expertise for business operations. These human resources competencies have traditionally been and continue to be intended to be leveraged to promote organizational efficiency and effectiveness. On the other side, human resource management is continually changing as the business evolves, and this transformation should be tied to an increase in education, skills, and competencies that are valuable to SMEs. The discoveries revealed that specific lean start-up activities and drafting a business plan are connected to success. However, the planning process may help entrepreneurs systematize their initial operations apart from gathering data and drafting. Even though entrepreneurs may be involved in social resourcing (Keating et al. 2014) and teamwork sense-making (Wood and McKinley 2010), codifying the outcomes of these operations has the potential to objectify these practices. Entrepreneurs participate socially through many dimensions in pursuing a venture, but formally writing down a business plan that can be shared with others might serve as an assurance mechanism. Founders may share this strategy with various stakeholder groups only for reaction (Wood and McKinley 2010), but they may use it to obtain funds (Richbell et al. 2006).

Hence, grounded on the abovementioned matters, the research aims to investigate the factors that influence the performance and success of SMEs in Kosovo. This research will be of interest to various young scholars, start-up businesses, and SME entrepreneurs, as also the structure of policy-making. The research uses primary data designed and presented according to the standard setup outlined by the conceptual framework, including the different business activities, characteristics, and start-up businesses. To realize this premise, the study has designed research questions from the outset to formulate a causal and unique approach between research questions and hypotheses. Therefore, the research questions are:

**(RQ1):** How do the education and experiences of entrepreneurs and management staff affect the success of SMEs?

**(RQ2):** What impact has a well-structured and adequate business plan had on the performance of SME Business success?

**(RQ3):** How do administrative and procedural obstacles impact SME performance?

The hypotheses offered in the context of this investigation are continually tied to the research questions raised and the substance of the investigation:

**H<sub>1</sub>:** There is a substantial positive correlation between education and SME business success.

**H<sub>2</sub>:** There is a substantial positive correlation between experiences and SME business success.

**H<sub>3</sub>:** A substantial positive correlation exists between drafted business plans and SME business success.

**H<sub>4</sub>:** A substantial negative correlation exists between obstacles and SME business success.

The study, therefore, intends to contribute in multiple ways, firstly with the extension of the scientific literature in which these drivers are explored and their effect, and concluding with unique empirical evidence in the scenario of SME factors that influence efficiency. The study of the factors that affect the performance of SMEs will influence policymakers to provide situations for formal and informal education for young people who want to start businesses and self-employment, to support with formal education and necessary information for start-up businesses, and provide financial and technical support to existing businesses to enable them to improve business performance and penetrate international markets.

## LITERATURE REVIEW

Every country's economic structure needs a high-quality business environment in the SME sector to be stable, successful, and competitive. The attractiveness of the business environment is a crucial component of a country's growth because it is essential to the expansion of the economy's competitiveness and its future and sustainable economic growth (Martin 2020). SMEs have emerged as a vibrant and active division of the worldwide economy, with various factors contributing to SMEs' improved efficiency and competitiveness. The sophisticated market environment has created severe competition among SMEs, requiring active interaction between owners and internal and external stakeholders. Qalati, Li, Ahmed, Manzor, and Khan (2021) although there is a confident association between entrepreneur qualities and firm performance in the context of SMEs, the association is still questionable, signifying that there are intervening constructs between the two constructs (Sidik 2012). The contribution of education, training, development, background experience and experience to SMEs' success was explored; however, only one category demonstrated conclusive proof that education and training had a beneficial effect on SMEs' success. Most businesses rely heavily on previous experience and skills (Simpson, Tuck, and Bellamy 2004). This review exposed the association between education and business experience with the business success of owner-managers. Whereas considering the education characteristic of SME's success conferring, Kim and Staw (1991) and Katz (1992) stated that those with advanced levels of education are more fruitful because higher education provides them with knowledge and modern managerial skills, making them more conscious of the reality of the business world and thus in a position to use their learning capability to manage a business (Wanigasekara and Surangi 2010). Organizational business planning is critical for accomplishing these goals since it creates owners of small businesses with a roadmap for progress. One of the most fundamental and challenging things in this planning process is to formulate a vision for the organization that gives significance to the very heart of the company (Howard, Ulferts, and Hannon 2019). Several of the challenges that SMEs face are caused by the external business environment, over which they have limited influence. The government is responsible for combatting corruption, implementing a simple and fair tax structure, and guaranteeing regulations and policies to promote a business climate



favorable to SMEs. The more successful SMEs, are more and more employees they will employ (Ramukumba 2019).

Balkans has continuously been at a crossroads of diverse cultures and societies, where different religions and people have existed. The academic community agrees that SMEs are important job developers and economic drivers in the Balkan region. In the meantime, all Balkan economies still suffer from unemployment and economic underperformance. In the past several years, each country in the Balkans has established governmental departments focused on SMEs to support their development (Apak and Atay 2014). SMEs in Kosovo are characterized by resource shortage, flexibility, and a high risk of failure due to the dynamic environment, particularly in transition environments such as Kosovo, which are associated with more regular changes in the business environment (Mahmutaj and Krasniqi 2018).

Individual factors in SME performance arise as family background, education, and experience in the business. Various specific factors contributed greatly to the businesses that have had a long experience pursuing their efforts; on average, they are motivated to excel in business (Sarwoko and Frisdiantara 2016). The key features mentioned in the international literature, identified as success factors, empirically tested, are the experience (specifically in management), the strategic planning, the owners' skills, the quality of the human resources, the founders' age, and the existence of a marketing policy, the type of market, the business area and the surrounding economic context (Rodriguez, Franco, Rui, and Cidalia 2021). The previous exploration verified that SMEs substantially affect a country's economy.

Thus, the performance of the SME sector is strictly associated with the country's performance (Khan, Tufail, and Ali 2021). The indicator's highest individual factor, which the owners of SMEs own, is business experience, which means that experience has been the key to the success of small businesses. Some indicators of individuals who contributed greatly among business people had the experience long enough to pursue their efforts; they also have an average motivation to succeed in business. One indicator of the highest individual factors owned by the owners of SMEs is business experience, which means that the experience has been the key to the success of small business owners so that they can compete with other SMEs (Sarwoko and Frisdiantara 2016). As a result, the success of SMEs is intimately linked to the country's performance (Khan et al. 2021). The role of the business plan is vital in assessing bankers, and the lack of a solid business plan hindered ethnic minority businesses' access to external finance. There are some critical relationships between the existence of a business plan, the type of business ownership, the annual growth rate of an enterprise, and access to finance (Bender et al. 2020).

The internationalizing SMEs and their competitive tactics are then described, as are industry evolution and its consequences for how SMEs perform, evolutionary outlooks of internationalization, and competitor theory. Many studies conclude by hypothesizing diverse patterns of market and industry conditions and competitive responses. Education, both previous and training and experience of managers and entrepreneurs tend to plan objectives and wider businesses (Odlin 2019). Previous views on SMEs are being redesigned; however, several characteristics for measuring performance and barriers to SMEs remain unexplained. Various theories concerning SME barriers have been developed, like financial constraints, competition,

corruption, political instability, and high manufacturing costs. However, these theories were only marginally concerned with the effect of SMEs' growth patterns (Noshad et al. 2019).

## METHODOLOGY

Our research employs qualitative methods to gather data from 336 enterprises via questionnaires to realize the premises presented in the form of hypotheses and to examine which of the selected factors influence SMEs' success in Kosovo. Based on empirical research, the models that yield the most accurate results and fit these data are generally logistic models (Osborne 2017). In our instance, ordered logistic regression was used. Therefore, the research from selecting features and empirical model is based on the authors' studies (Krasniqi and Mustafa 2016; Durguti and Arifi 2021; Avdullahi and Hoti 2020; and Expósito and Sanchis-Llopis 2019). This empirical method was employed since the dependent variable possesses two ranks (rank 1 - we expect better success in 2021, and 2 - we do not expect any change to 2020).

In such cases, multinomial logistic regression can also be applied but ordered logistic regression is preferred because when the dependent variable (is ranked in two groups) is projected, it gives an extra accurate representation of the results compared to other models. The execution of the model and the testing of the presented hypotheses are done at the significance level of 1, 5, and 10 percent. Our model has determined the dependent variable, the evaluation of the perception of the success of SMEs for the year 2021, while the independent variables are education, work experience, business plan, and barriers.

### Empirical Model

The selection of the appropriate model and its development to analyze the effects of the variables on the success of SMEs is a sensitive issue that must be tailored to the complexities of the data that have been applied. Because the employed data are integrated and binary, and the predicted regressor has two characteristics, the approach designed and derived in our unique scenario is tailored to them (it is ranked 1, 2; where: 1 - indicates better success than in 2020, while 2 - represents the same or worse success than in 2020). When dealing with such data, logistic regression models are preferred, and if the dependent variable takes more than two attributes, then MLR is strongly suggested; if the predictor variable has two ranks (characteristics), then ordered logit or probit regression provides the most robust results (Osborne 2015; Osborne 2017). As a result, our investigation employs OLR to evaluate the impact of important variables like education, work experience, drafted business plan, and the barriers imposed during and after the pandemic on the success of SMEs, as perceived by business managers/owners. Logistic regression is a generalized linear model with a systematic component that directly describes the predicted value as a function of understanding the predicted output. The systematic component comprises predicted information that enables us to recognize the interaction between the binary feature of SMEs' success and other explanatory variables. Therefore, as a result, a general formulation for the logistic regression model is as follows:

$$O_r(Y = 1|X) = \beta_0 + \beta_1 X_1 + \beta_2 X_2 + \dots + \beta_m X_m + \mu_i + \varepsilon_i \dots \dots \dots (1)$$

$O_r$  represents the success of SMEs; meanwhile,  $\beta$  is the set of measures used in the study to evaluate their impact on SMEs' success. Expanding equation (1) over the probability technique (Pituch and Stevens, 2015. pp. 445), the paradigm is:

$$\rho = \frac{e^{(\beta_0 + \beta_1 X_1 + \beta_2 X_2 + \dots + \beta_m X_m)}}{1 + e^{(\beta_0 + \beta_1 X_1 + \beta_2 X_2 + \dots + \beta_m X_m)}} \dots \dots \dots (2)$$

Consequently, without burdening it with other arithmetical explanations, the actual equation in our research is:

$$\begin{aligned} \text{SME}'s_{\text{performance}} \left( \text{SME}'s_{\text{performance},i} = 1 | X_i \right) \\ = \alpha + \beta_1 \text{EDU}_i + \beta_2 \text{EXP}_i + \beta_3 \text{BP}_i + \beta_4 + \beta_5 \text{BAR}_i + \mu_i + \varepsilon_i \dots \dots \dots (3) \end{aligned}$$

SMEs represent the possibility that a firm has no barrier in increasing success for participant  $i$ , while 1- SMEs represent the possibility that a firm has difficulty achieving success for participant  $i$ . To test and validate the hypotheses, the study employed OLR to explore the parameters (education, work experience, drafted business plan, and barriers) that significantly affect SMEs' success. Usually, when dealing with dependent constraints that are not continuous numbers but have two or more categories, ordered logistic regression is applied more often (Osborne 2015; Adeleke and Adepoju 2010).

## EMPIRICAL APPROACH

### Data and Sample

The survey approach comprises various specific phases and incorporates several variables associated with the performance of SMEs. The questionnaire was organized and collected through the questionnaire during April and May 2021, followed by their processing based on the data provided with STATA software. The company, Economic and Education Consulting, administered the survey. It was divided into three sections: the first covers general business characteristics, the second covers education, training, work experience, etc., and the third shed light such as the business plan, the challenges experienced by businesses, and the barriers created in particular during the pandemic and afterward. The survey was distributed in seven Kosovo districts (Prishtina, Mitrovica, Peja, Prizren, Ferizaj, Gjilan, and Gjakova), providing equal likelihood for selection. The selection of the sample was made from the database of the Business Registration Agency. Then this list was compared with the list of inactive businesses from the database of the Tax Administration of Kosovo, and finally, the active list of businesses was extracted.

Throughout this study, sampling was employed. The dataset provides sufficient information for sample stratification, such as the sector in which business is conducted, the region, and the size. The sample of 336 active businesses is deemed sufficiently representative to achieve research objectives with a confidence level of 95 percent and an error margin of +/- 3 percent. To obtain accurate findings, the sample size is calculated by determining an acceptable proportion, which varies across research by 10 to 20 percent, but 10 percent is sufficient

(Saunders et al. 2009). Our sample represents 10 percent of the entire population of active firms in the three sectors (trade, production, and services) and provides a baseline for reaching empirical findings.

## Variables and Statistical Summaries

The dependent variable used in this research is the manager/owners' perception of evaluating the success of SMEs. Generally, previous research has been conducted using two methodologies for evaluating the success of SMEs, namely the qualitative and quantitative approaches. Variables such as perceptions of overall productivity, management style, employee behavior, innovations, and target markets have been used to evaluate the success of SMEs from a qualitative perspective (Anggadwita and Mustafid 2014; Expósito and Sanchis-Llopis 2019; Durguti et al. 2020; Krasniqi et al. 2020). Additionally, based on the several perspectives in the literature review section, our research employs a qualitative technique to examine managers'/owners' perceptions of SME success. The examination and validation of SME success in 2021 are coded with 1 (e.g., better success than 2020), whereas the opposing perspective is coded as 2.

*A priori* independent variables such as education, drafted business plan, and work experience according to expectations should positively affect the success of SMEs. At the same time, the barriers (which include the limitations faced by SMEs during and after the Covid-19 pandemic) are expected to have had a negative influence since, during, and after the pandemic, the measures taken by the responsible bodies were contradictory following reality.

Table 1 summarizes the factors, the number of observations, the mean values, the standard deviation, the minimal, and the maximal values. According to the study, the dependent factor is influenced by the explanatory components in 2021 compared to the previous period in 2020. The mean value from 336 measurements was 1.34, with a sampling error of 0.032 percent. Education has a mean value of 2.1 as an explanatory factor, with the minimal and maximal values being 1 and 3, respectively. Another significant determinant of company performance is staff experience, which has resulted in a mean value of 7.09 (which means 7.1 years is the average of experience), with the lowest and greatest values of experience being 1 and 40, respectively. The sample mean from 336 observations for a drafted business plan was 1.54, suggesting that 77 percent of firms had a written business plan. In our scenario, barriers viewed as hurdles to company development in most research resulted in mean values of 3.48 with an ordinary deviation of 7.3%, or 66.6 percent of respondents indicated that barriers limit performance or business development.

**Table 1: Variable and Statistics Description (Source: Authors' calculation)**

Variables	Description	Obs.	Mean	St. dv.	Min.	Max.
<i>Dependent Variable</i>						
SME <sub>p</sub>	Perception of SME's success for 2021	336	1.34	.032	1	2
<i>Independent Variables</i>						
EDU	Education	336	2.10	.536	1	3
EXP	Work experience	336	7.09	.505	1	40
BP	Do you have a business plan	336	1.54	.019	1	2
BAR	Barriers	336	3.48	.073	1	5

In addition to descriptive statistics, the survey employed correlation breakdown to determine the interaction with managers'/owners' perceptions as a dependent variable vis-à-vis for education, work experience, business plan utilization, and barriers imposed by government authorities' measures. Additionally, the outcomes of this breakdown will be exploited if the data gathered from respondents have any concerns about multicollinearity.

**Table 2: Correlation Analysis (Source: Authors' calculation)**

	SME <sub>p</sub>	EDU	EXP	BP	BAR
SME <sub>p</sub>	1.0000				
EDU	0.0953	1.0000			
EXP	-0.0678	0.0331	1.0000		
BP	0.0227	-0.2636	-0.1109	1.0000	
BAR	0.1005	0.0239	0.0372	-0.0146	1.0000

Table 2 shows that education, business plan, and barriers positively correlate with the perception of business development, but work experience has a negative correlation. In the deeper parts of the same tables, the strongest association between the explanatory factors appears. Because the data employed in the pattern does not exhibit multicollinearity, these results offer trustworthy evidence. Multicollinearity dilemmas are recognized when the constants among the dependent and explanatory factors are 0.80 or higher (Pituch and Stevens, 2015). This conclusion is further confirmed by the variance inflation factor (VIF) results, which show a mean value of VIF = 1.04 in the diagnostic testing section of Table 4.

## Econometric Findings

To eliminate uncertainties regarding the soundness of the proposed model evaluation, the revision employs chi-square Pearson and Deviance. Thus, according to Table 3, the chi-square approach is usually tested at a relevance degree of  $p < 0.05$ . According to the report's results, the selection of the ordered logistic model is suitable and proper since the p-value is 0.006. This result presents that the model correctly predicted the observed data.

**Table 3: Model Fit and Goodness-of-Fit Information (Source: Authors' calculation)**

Model Fitting Information					Goodness-of-Fit			
Model	-2 Log-Likelihood	Chi-square	df	Sig.		Chi-square	df	Sig.
Intercept only	58.731				Pearson	28.060	15	.411
Final	42.112	24.184	9	0.006	Deviance	30.105	15	.357

*Link function: logit*

Pearson and Deviance chi-square were used to validate goodness-of-fit information. The results of this analysis are presented in Table 3 at a significance level of  $p < 0.05$ . The empirical data obtained using the STATA software confirm that the Order Logit Regression model is fit and goodness-of-fit since  $p = 0.006$ , thus lower than  $p < 0.05$ . This demonstrates that the proposed approach is ideal for sample research. The chi-square outcome provides additional proof for appropriate model determination, which reveals statistically insignificant deviance with a coefficient of  $p = 0.411$ . If the Pearson and deviance coefficients are insignificant, the studies conducted by Petrucci (2009) and Field (2018) provide strong evidence that the model is specified appropriately and consistently. We employed pseudo-R-Square to observe the explanatory relation for the dependent and independent variables, which provides us with essential information. The pseudo-R-Square output of 0.5149 indicates that the explanatory variables explain 51.49% of the predictor variable, even though the remaining may be determined and explained by different factors not part of the analysis. Even though there is no explicit explanation or consensus for pseudo-R-Square interpretation, there seems to be little doubt that a specific algorithm impacts how this result is interpreted (Pituch and Stevens 2016). As a result, this finding should be interpreted carefully, and only the context of the interaction of the variables that affect business performance should be evaluated.



**Table 4: Parameter Estimates (Source: Authors' calculation)**

		Coefficients [Odd ratio]	Z [Statistics]	Significance [p-value]
<i>Dependent variable: Perception for business evaluation for 2021 = 1</i>				
<i>Independent Variables</i>	Education	.3746485	1.75	0.081
	Work experience	.0273565	1.41	0.057
	Having a business plan	.1945653	0.81	0.416
	Barriers	-.2054088	-2.12	0.034
<b><i>Diagnostics</i></b>				
<i>Likelihood ratio test</i>		24.148	-"-	0.006
<i>Pseudo R-square</i>		0.5149	-"-	0.005
<i>Durbin-Watson</i>		1.6667	-"-	-"-
<i>Breusch-Pagan / Cook-Weisberg for heteroskedasticity</i>		14.2611	-"-	0.613
<i>Mean VIF</i>		1.04	-"-	-"-
<i>Breusch-Godfrey LM test for autocorrelation</i>		9.157	-"-	0.0025
<i>N</i>		336	-"-	-"-

*Link function: logit*

The Durbin-Watson testing investigated whether the data set exhibited serial correlation concerns. The validation coefficient is 1.6667, confirming that the statistics are within the specified range (Durbin and Watson 1971). The Breusch-Pagan/Cook-Weisberg test was performed to examine if the reported data had a heteroskedasticity problem. The reliability of the test reveals that the data provided by the determined sample does not have such concerns since the coefficient value is 0.613. Lastly, the Breusch-Godfrey LM autocorrelation test was utilized, and the results validated the underlying premise that the evaluated data did not contain autocorrelation, with  $p=0.0025$ .

## RESULTS AND DISCUSSION

The results presented in Table 4 reveal that education is positively and with significant influence related to the success of the SME, and at the level of reliability of 10 percent since the p-value and odd ratio are  $p=0.081$ , and with coefficient  $\beta=0.3746485$ . This outcome is consistent with expectations and verifies the first hypothesis, which is that education significantly impacts the success of SMEs. Our analytical result implies that increasing the level of education by one unit (odd ratio) increases the success of SMEs by 0.37 units, presuming all those other factors remain constant. The findings of our study are in the spirit of the results revealed by Eugene (2014), advocating that education is a critical issue since it enables the management structure to gain knowledge of critical thinking, making them more competitive in the market. Magoutas et al. (2011) reached the same conclusion arguing that there is a positive relationship between

these two variables based on panel data for 287 firms in the context of the Greek economy. Similarly, the research performed by Meshram and Rawani (2019), examining the factors to determine their effect on the success of SMEs, argues that the level of education and management abilities are the key determinants of the success of SMEs.

Professional experience is an essential characteristic that should benefit the development of SMEs, whether directly or indirectly. As a result, several studies have been conducted in this sense to explore the function of work experience and its relationship with the success of SMEs. Throughout their survey of the psychology of entrepreneurship, the scholars Frese and Gielnik (2014) addressed the meta-analytic approach by presenting the findings from the aspect of personality dimension, self-efficacy, the need to achieve success, and entrepreneurial orientation, which have emphasized a strong connection between the success of SMEs. Based on the p-value ( $p=0.057$ ), previous work experience has a positive and important influence on the success of SMEs, with a confidence interval of 10 percent. Our result at the same time also confirms the second hypothesis. It indicates that SMEs with leadership structures with longer work experience are predisposed to be more successful than those with leadership structures with lower experience. Based on the results of the coefficient (odd ratio)  $\beta=.0273565$ , each increase per unit of work experience has a positive consequence on the success of SMEs by 0.027 units, assuming that all other factors stay constant. Similar outcomes were also discovered by Krasniqi et al. (2020), who reported that management with experience outperforms management with less experience. Owalla et al. (2020) reached the same statements after analyzing (reviewing) 109 scientific research, arguing that the organizational environment and management expertise have a significant impact.

Based on the results performed by the analysis for the variable having a business plan, it turned out to be statistically insignificant in determining the success of SMEs. This argument is supported by the probability of p-value ( $p=0.416$ ). Our conclusion deviates from the predicted outcomes, and the third hypothesis is not accepted. The research results oppose the hypothesis of Durguti et al. (2020) and Kunoviku-Demiri et al. (2021), who discovered that SMEs in the setting of Kosovo with a business plan had high efficiency and efficient access to financing.

As previously stated in the research topic, the scientific models are connected to the redesign of the legal infrastructure for SMEs; nonetheless, a variety of factors remain to be addressed to determine their influence on the success of SMEs. Most earlier research on barriers to SMEs' success has concentrated on financial challenges, market dynamics, perception of corruption, and political instability. In contrast, internal factors directly connected to management abilities and their effect on SMEs' success have received less attention (Noshad et al. 2019). Within our scenario, the barriers are addressed by government decisions taken during and after the pandemic (including restrictions on specific activities, limitations on mobility, compensation packages for enterprises, etc.), which have been seen as experimental in most situations. The results of ordered logistic regression, as summarized in Table 4, reveal that the barriers have a statistically significant influence with a negative sign in the confidence interval of 5 percent since  $p=0.034$  is less than  $\alpha=0.05$ . The data analysis evidence comes to light in the trajectory of the study conducted by Asif-Khan, (2022), which demonstrates that the determinants that have a significant influence on the success of SMEs include a lack of financial accessibility, legal infrastructure, and the decision-making process, as well as economic barriers.

## CONCLUSION

The study's main goal was to explore business perceptions regarding education, experiences, business plans, and barriers to business success, focusing on perceptions and self-evaluation of business management in the context of the Kosovo private sector. SME development offers many employment opportunities, which can help reduce unemployment and meet the demographic challenges of these populations, which are growing rapidly. In addition, developing the SME sector can enhance competitiveness and productivity while boosting global revenue and per capita incomes. This development will also promote the structural transformation of the SME sector due to its connection with innovation and technological development. Business perception for success factors is very important for two main reasons. First, the perception of the actors who are challenged daily by different barriers is an address that businesses think they need to develop further. Second, internal business factors are success determinants that are difficult to evaluate from an outside perspective.

Although in Table 1, it appears that the independent variables are related to the dependent variable, that is, to the perception of businesses to evaluate success, some of these variables show us the urgency to influence these factors in order for businesses to be successful and consequently, the national economy grows through them. Education and work experience are rated as two highly influential factors; therefore, it is more than necessary to reform and implement professional education as soon as possible as direct components that help businesses prepare staff for their needs in the future. Also, the associations that connect businesses with public institutions and professional schools are proven to offer very good and necessary conditions for the informal education of existing business staff. Kilpatrick and Crowley (1999) emphasized that businesses with partners or employees with post-school qualifications were likelier to engage in ongoing learning activities, especially courses and learning from consultants and mentors, suggesting a relationship between an orientation to training and learning and success. There appears to be a relationship between success and learning on the job; that is, learning undertaken in recent times and achieved as a result of trial and error or experience gained when establishing a business. No other category of ongoing learning activity was used more (or less) by successful businesses.

On the other hand, the business plan variable is related but less than the other two variables. Fernández-Guerrero et al. (2012) show that variables that evaluate business plan quality influence survival chances. Adding essential characteristics related to the entrepreneur and the business (education and training, experience, kind of motivation, number of employees, and start-up capital) does little to increase the model's predictive capabilities. However, the business plan is more of a necessary tool for starting a business than for increasing the performance and success of the business. The education and experience of the staff also fulfill the natural requirements for a business plan by replacing them with other planning models such as strategic management or projects. Barriers that in most studies are treated as obstacles to business development in our scenario have resulted in these average values of 3.48 with a standard deviation of 7.3% or 66.6% of respondents answered that barriers hinder performance or business development. Based on the study, the barriers are mainly influenced by external influence, and very few are internal factors. Therefore their elimination depends very little on the

businesses themselves. The elimination of barriers is mainly in the hands of business associations to influence the improvement of the business environment and also in the competent public institutions with duties and responsibilities.

### **Policy-making Implications**

Policy-making processes and business organizations might also benefit significantly from studies on business policy redesign, particularly in a policy of self-education and providing improved services to businesses. Even though public education spending has increased in GDP terms and is currently equivalent to the EU average, educational quality continues to lag behind peers, as evidenced by PISA results that remain the lowest in the Western Balkans. The pandemic has affected education quality even more since virtual instruction has been hindered by insufficient computer access in schools and homes. University enrolment is heavily skewed toward social sciences, with natural, applied, and formal sciences receiving relatively lesser curiosity. In compliance with this, companies refer to a skills mismatch as a barrier to doing business. The IMF Report for Kosovo 2021 stressed the importance of promoting vocational education, improving classroom instruction, updating the curriculum, and increasing collaboration with higher education and businesses. Boosting students' access to technology is critical in the short term to preserving education quality if virtual learning is resumed.

The establishment of a business court is still in process. Additional work must be done to reinforce the institutional framework and technological infrastructure of the Kosovo Cadaster Agency, as well as the entire privatization of public buildings. Reinforcing the rule of law, notably in contract enforcement and property rights areas, is an important and urgent step. Even though the overall effectiveness of these reforms remains low, substantial political and criminal justice reactions are necessary to effect serious reform on this issue. Judiciary reforms to combat criminal activity and high-level corruption help reduce structural lending barriers. Broad-based credit expansion before the 2020 Covid-19 pandemic was partly represented by the loosening of supply constraints as reforms boosted the claims enforcement system. Nonetheless, more actions, such as establishing a commercial court (a proposed statute) and constructing a housing price index, are required to boost contract enforcement and decrease information asymmetries.

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# FACTORS IN CONSTRUCTING INDONESIA'S PERSPECTIVES ON THE INDO-PACIFIC

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**Abstract:** *The term "Indo-Pacific" became increasingly significant and was accepted by several countries, including Indonesia. The government welcomed the term as part of its foreign policy projection, which developed its unique perspective or interpretation, including inclusivity, a rule based on international law, and ASEAN's centrality and cooperation for regional growth. This study would answer the question of how the concept of Indo-Pacific will be interpreted within Indonesia's unique context compared to other countries. Thus, this research aimed to describe several key factors in constructing the Indonesian perspective on the Indo-Pacific concept, particularly under President Jokowi's leadership. This research applied qualitative with library methods from the primary and secondary data sources. This paper argued six factors that constructed Indonesia's perspective on Indo-Pacific: maritime historical legacy; the "Bebas-Aktif" principle; ASEAN values; geographical position; and democratic values. The research concluded that Indonesia is one of the major countries that consistently championed the term "Indo-Pacific" within the regional and international spheres, with a "moderate" status in terms of its foreign policy implementation, which is mainly characterized by inclusivity and cooperation in the economy by constructively engaging all countries.*

**Keywords:** *Indonesia; Indo-Pacific; Bebas-Aktif; Jokowi; Global Maritime Fulcrum*

## INTRODUCTION

Japan has played a crucial role in developing the Indo-Pacific concept over the last two decades. The confluence of the Indian and Pacific Seas in "broader Asia" was obliquely referenced by Japan's Prime Minister Shinzo Abe in his speech to the Indian Parliament in August 2007 about "the dynamic coupling as seas of freedom and prosperity". He embraced the perspective of the Indo-Pacific, concentrating on infrastructure development in East Asia, the Middle East, and Africa (Abe 2007). Within Indonesia's context, particularly under President Jokowi's successive leadership, the Indo-Pacific concept has been increasingly used since 2014, owing to the vocabulary strongly coinciding with his vision of the Global Maritime Fulcrum. Indonesia's perspective on the Indo-Pacific under Jokowi's leadership emphasized several principles: cooperation, no rivalry, inclusiveness, transparency and openness, and respect for international law (Setkab 2018). Indonesia believes cooperation in the region must be concrete through development cooperation, especially in the economic field, to achieve a stable, prosperous, and constructive Indo-Pacific region (Antara 2019). However, Indonesia applied values in the Indo-Pacific differ from the United States' policy through political or security alliances such as the Quadrilateral Security Dialogue (QSD) or AUKUS (Australia, United Kingdom, and United States). Given this dynamic, analyzing the factors behind Indonesia's

perspective on the Indo-Pacific is critical to explain the rationality to other countries that could encourage cooperation rather than conflict in the region.

## **FACTORS IN FORMULATING INDONESIA'S PERSPECTIVE ON INDO-PACIFIC**

In formulating Indonesia's perspective on the Indo-Pacific, several significant elements become its major foundation: maritime historical legacy; "Bebas-Aktif" foreign policy principle; ASEAN multilateralism; geographical position; and democratic values.

### **Maritime Historical Legacy**

In terms of the maritime historical legacy aspect, the maritime kingdoms of Indonesia in the past played an essential and inseparable role in contributing to Indonesia's recognition of the concept of the Indo-Pacific. As the term is critically close to the maritime domain within the Indian and Pacific oceans, it is relevantly correlated with the historical past of Indonesia's maritime kingdoms. Several of Indonesia's maritime empires had critical roles in the past maritime affair in the region in enacting the spirit of Indonesia's glory in the past, which recalled in the modern day such as Kutai Kingdom, Tarumanegara Kingdom, Sriwijaya Kingdom, Singhasari Kingdom, Mataram Kingdom and Majapahit Kingdom (Winarsih 2018).

President Joko Widodo (Jokowi) justified and correlated the Indo-Pacific following his vision of the Global Maritime Fulcrum on a historical aspect at his first state speech after taking the oath as President of Indonesia for 2014-2019 on Monday, 20 October 2014; he stated:

Oceans, seas, straits, and bays are the future of our civilization (...) We have long turned our backs on the oceans, seas, straits, and bays. So, starting today, we will bring back the glory of our ancestors as brave sailors. The motto of our ancestors in the past resonates again 'Jalesveva Jayamahe' [which means] on the sea we are victorious (Widodo 2014, 10).

It concluded that the Indo-Pacific term closely correlated with the maritime sphere of Indonesia as a nation with solid marine historical background. In the modern history of Indonesia, particularly in the context of the colonial era, the territory of the Indonesian state still refers to the regulations of the Dutch East Indies colonial era, namely the Territorial Zeeënen Maritieme Kringen Ordonantie 1939 (TZMKO 1939). In TZMKO (1939), it is written that the territorial waters of Indonesia are only three nautical miles wide, which surround each island. Thus, foreign ships could cross the waters that separate the islands. Each country could carry out any beneficial or detrimental activity to Indonesia's sovereignty. Foreign ships are free to sail in the Java Sea, Banda Sea, and Makassar Sea, which are within the Republic of Indonesia (RI) territory. Indonesia objected to this regulation because the TZMKO (1939) ignored the unique characteristics of Indonesia as an archipelagic country (Fatimatuzzahro and Raditya 2021).

Prime Minister Djuanda Kartawidjaja declared that Indonesia's seas are not limited to the zones regulated in TZMKO (1939). Instead, Indonesia adheres to the idea of an archipelagic country, which means that its sea area comprises the sea next to, between, and within the Indonesian archipelago. Indonesia has 17,000 islands whose unity and defense must be

maintained. The Djuanda Declaration was announced on 13 December 1957. The essence of the Djuanda Declaration was that Indonesia had absolute sovereignty over all the waters around it. The Djuanda Declaration was recognized and stipulated in the 1982 United Nations Convention on the Law of the Sea (UNCLOS). However, it took a long time before the world realized it. RI increased by 2.5 times to 5,193,250 km<sup>2</sup>, except for Irian Jaya, which had not been recognized internationally then. Based on the calculation of 196 straight baselines from the farthest island points, a virtual boundary line surrounds the Republic of Indonesia along 8,069.8 nautical miles (Ulwiya 2019). Thus, the ancient and modern maritime histories played a critical role in constructing Indonesia's maritime vision in several aspects, including defense, political, economic, social, and cultural perspectives.

### **"Bebas-Aktif" Foreign Policy Principle**

This belongs mainly to the "Bebas-Aktif" (Free and Active) foreign policy as a constitutional mandate that must be carried out in diplomacy and Indonesian foreign policy (Marsudi 2019). The guiding idea is founded on the harsh legacy of colonialism and the Cold War block competition between the US and USSR (Greenlees 2018). Bebas-Aktif was characterized by Hatta's idea in 1953 as the founder of foreign policy, which stated that Indonesia's independent principle does not wish to align herself with either of the opposition blocs, the Western bloc or the Communist bloc, whereas the active principle because it actively carries out a peaceful policy as a loyal member of the United Nations, by practicing its independent and dynamic approach, Indonesia endeavors to seek friendship with all nations, whatever their ideology or form of government, based on mutual respect (Hatta 1953).

In the context of the South China Sea conflict, the trilateral defense partnership between Australia-UK-US (AUKUS) and China might lead to a conflict between the two blocks, particularly as the trilateral military pact's development of nuclear-powered submarine technology by Australia, Britain, and the US has the potential to endanger stability, security, and peace in the Indo-Pacific area. As a result of the South China Sea conflict, Indonesia's stance towards AUKUS and PRC can demonstrate that the country is in the middle of a conflict between the AUKUS and China. According to the principle of active foreign policy that Indonesia has implemented, the situation in the Indo-Pacific is not neutral but guided by clear policy direction. In this situation, Indonesia can benefit from the existing hostility between the two parties in the economic and defense sectors (Putro 2021).

Indonesia's closeness to AUKUS might be seen in its political stance favoring national interests in the military. Indonesia avoided openly supporting the AUKUS, which might prevent Indonesia from branding itself as a go-between for AUKUS or the PRC, for Indonesia to continue to be in a strong bargaining position to carry out economic cooperation with China, keeping in mind that economic growth and development are one of the leading programs of the government of President Joko Widodo. Close ties between Indonesia and AUKUS in the field of defense can go hand in hand with the close relationship between Indonesia and China in the economic sector, which is currently underway. A free and active foreign policy is still relevant to advancing international politics because it can still be carried out with an emphasis on



Indonesia's national interests and a balanced position by not favoring any group or country in the Indo-Pacific (Putro 2021).

Bebas-Aktif policy also played a role in achieving world peace, continued to contribute, and is always part of the solution to nations' problems by promoting a win-win approach (Putro 2021). This idea represented in an Indo-Pacific strategy focused on ASEAN that is more in line with the organization's inclusiveness values in contrast to the US vision of a "free" Indo-Pacific sees domestic political openness and good governance as essential components, which puts it in conflict with China (Acharya 2019). In addition, as the Global Maritime Fulcrum became a vision under his leadership, he stressed that Indonesia would continue to adhere to an active foreign policy and be involved in every international forum (Lumanauw 2014).

## ASEAN Values

Within Indonesia's foreign policy on a multilateral level, ASEAN has been regarded as the cornerstone of Indonesia's foreign policy since its establishment until now (Marsudi 2019). ASEAN is a crucial instrument in implementing Indonesia's foreign policy, which is a priority at the regional level as the first circle of Indonesia's foreign policy (Fitriani and Panduwinata 2018). Notably, Indonesia has a significant role in the association. It is perceived as the leader of ASEAN due to factors including having the largest population, being wealthy in natural resources, and having the biggest economy in the region.

The association based on the Treaty of Amity and Cooperation in Southeast Asia (TAC) of 1976 contains the following essential principles, which the ASEAN Member States have endorsed, namely: (i) mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations; (ii) the right of every state to lead its national existence free from external interference, subversion, or coercion; non-interference in the internal affairs of one another; (iii) settlement of differences or disputes by peaceful means; (iv) renunciation of the threat or use of force; and (v) effective cooperation among themselves (ASEAN 2021, 2).

In responding to the development of the Indo-Pacific dynamic term, Indonesia is the leading country in promoting the adoption of the ASEAN Outlook on the Indo-Pacific (AOIP), which coincides with maritime diplomacy under the Global Maritime Fulcrum vision and interest in the Indo-Pacific idea (Acharya 2019; Kemlu 2019; Khaoirunnisa and Aryani 2022). Jokowi stated that the idea of the Indo-Pacific is fundamental for ASEAN to remain relevant and maintain its centrality. The Southeast Asia region, located in the middle of the Indo-Pacific region, must become a fulcrum by building peace and prosperity, turning this potential threat into an increase in cooperation within the tug-of-war of world power constellations.

Jokowi also underlined the importance of ASEAN developing cooperation in the Indo-Pacific region, prioritizing openness, inclusiveness, transparency, respect for international law, and respect for ASEAN's centrality. In addition, Jokowi welcomed the positive response from ASEAN countries to the Indo-Pacific concept and made it a joint ASEAN concept as member countries provided full support for the idea (Kementerian Sekretariat Negara 2018). Indonesia's foreign minister stated that as ASEAN adopted Outlook on the Indo-Pacific, Indonesia would ensure implementation in the next five years (Marsudi 2019). ASEAN also complements its



extended forums, such as the East Asia Summit (EAS), ASEAN Regional Forum (ARF), ASEAN Defense Minister Meeting (ADMM), and ADMM Plus, to improve the regional architecture.

## **Geostrategic Position**

Indonesia occupies a valuable geostrategic location in a significant triangle territory encompassing two oceans. It is a critical triangle that spans the Pacific and Indian Oceans. Indonesia is in the center bordering Japan in the north, Australia in the southeast, and India in the southwest. As a result, some of the world's most critical sea lanes - connecting the Pacific and Indian Oceans - can be found as the largest archipelagic country in the world, with around seventeen thousand islands (Natalegawa 2013).<sup>1</sup> Indonesia owned several critical straits in the hub of the region, especially the Strait of Malacca, which is the main transit route for commodity trade to Asia and is part of Indonesia's territory, followed by other critical straits such as the Straits of Sunda, Lombok, and Makassar (Kusumastuti 2014).

Indonesia ratified the Convention on the Law of the International Sea and is legally obligated to provide foreign ships and aircraft that can traverse Indonesian waters through the route specified, called the Indonesian Archipelagic Sea Lane (ALKI). There are three ALKI: (i) crossing the South China Sea, Karimata Strait, Java Sea, Sunda Strait, Indian Ocean including the Strait of Malacca; (ii) crossing the Sulawesi Sea, Makassar Strait, Flores Sea, Lombok Strait; (iii) across the Pacific Ocean, Maluku Sea, Seram Sea, Banda Sea, Ombai Strait, Sawu Sea, Indian Ocean (Idhom 2021, 1). Several countries have become more dependent on and rely on the strait, including China, Taiwan, Japan, and South Korea (Paszak 2021). Besides tremendous opportunities within Indonesia's waters, it also threatened Indonesia's security.

In traditional threat, Indonesia's current position has a strategic vulnerability due to located between two continents and two oceans, particularly between the marine base in Darwin and nuclear-powered submarines, the deployment of troops at the British Indo-Pacific naval base, and the deployment of troops in the South China Sea, which can threaten Indonesia at any time (Permatasari 2022).

In the non-traditional threat, the International Military Council on Climate and Security (IMCCS) report on "Climate and Security in the Indo-Asia Pacific" was published in July 2020. The report stated that exacerbated impacts of climate change, such as increased food and water insecurity, migration and forced displacement, disaster response, and a subdued recovery, and the broader economic impact could seriously complicate these existing security vulnerabilities - eroding coping capacity, increasing grievances, and exacerbating tensions and fragility. Further, the impacts of climate change will interact with the evolving regional security landscape. They will likely create new, potentially devastating risks, which may emerge in predictable but difficult-to-predict ways. Moreover, the residents of the Indo-Pacific are five times more likely to be affected by natural disasters than individuals living elsewhere (IMCCS Expert Group 2020). Indonesia must address the regional vulnerabilities, especially in the context of the Global

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<sup>1</sup>According to Geospatial Information Agency and Center for Hydrography and Oceanography TNI-AL (2018) the number of islands in Indonesia has approximately 17,504 islands, and those that have been standardized and registered with the The United Nations (UN) consists of 16,671 islands.

Maritime Fulcrum at the hub geographical center of the Indo-Pacific, as 40 percent of marine traffic passes through Asia from the country (Kemenhub 2018, 1).

## Values of Democracy

Since the end of Suharto's authoritarian regime in the last 32 years, through reformation in 1998 (Ganesan 2004), Indonesia has made great strides toward democracy, developing significant media and political pluralism and enduring many peaceful power transitions between parties (Freedom House 2022). The first foundation of Indonesia's democracy was written in the preamble to the 1945 Constitution underlines the spirit of a democratic country which states, "the Indonesian national independence in a Constitution of the State of Indonesia, which was formed in order of the Unitary State of the Republic of Indonesia which is sovereign by the people".

The second important pillar is "Pancasila", which was created on 1 June 1945 and consisted of the five basic ideas of the country. With the concept of "Pancasila democracy", the Pancasila evolved into democratic values.

According to Darji Darmodihardjo, the concept is rooted in the Indonesian nation's personality and philosophy of life, whose embodiment is included in the provisions of the Preamble of the 1945 Constitution (Badan Pengkajian 2018). The concept of Pancasila democracy is defined as a democracy that is led by wisdom in deliberations/representations and that contains the spirit of belief in One Almighty God, just and civilized humanity, Indonesian unity, and social justice (Soemantri 1986, 7). Pancasila democracy has the following principles from an ideological and constitutional point of view, namely: equality for all Indonesian people; the balance between rights and obligations; the exercise of freedom that is ordinarily responsible to God Almighty, oneself, and others; realizing a sense of social justice; decision making by consensus deliberation; prioritizing national unity and kinship; uphold national goals and ideals (Soemantri 1986, 7).

Discussing the democracy quality in Indonesia, the 2021 Democracy Index launched by The Economist Intelligence Unit (EIU) in early February 2022 shows that Indonesia's average score on the index reaches 6.71. This score increased compared to 2020, which was 6.30, and currently, Indonesia's ranking has risen from 64 to 52 out of 167 countries studied. Indonesia is included in the ten countries with the best score improvement performance (Economist Intelligence EIU 2021, 13).

As the third and largest Muslim democratic country in the world, Indonesia contributes on an international level to promoting democratic values through the "Bali Democracy Forum", which was first held in 2008, ten years after *reformasi* started with the belief that promoting democracy is an integral part of Indonesia's foreign policy (Kemlu 2021). The 14th Bali Democracy Forum (BDF) in 2021 discussed "Democracy for Humanity: Advancing Economic and Social Justice during the Pandemic" (Chaterine 2021). Hence, Indonesia's strong adoption of democratic values correlated with Jokowi's Nawacita foreign policy principle, including the Global Maritime Fulcrum and ASEAN Outlook.

## CONCLUSION

Indonesia's perspective on the Indo-Pacific significantly arose under President Jokowi's leadership on regional and international levels, with a solid background of reasons to adopt and recognize the Indo-Pacific terminology. Maritime history, the Bebas-Aktif foreign policy principle, ASEAN multilateralism, geographical position, and democratic values became vital to improving Indonesia's international status, especially in achieving the Global Maritime Fulcrum vision within the Indo-Pacific region. Assessing Indonesia's perspective on the Indo-Pacific resulted in a "moderate" approach to the regional construct, characterized by differences from the United States on the "hard" approach by exclusion on China, whereas Indonesia and ASEAN's inclusiveness on China's position in the region. However, Indonesia does not freely accept China's behavior by encouraging a set of rules and norms in the region to follow and by inviting other central states, including the United States, India, Japan, Australia, and others, to create cooperation as a key spirit in the region.

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# ASSESSING THE SCOPE OF LEGAL IMMUNITY IN MODERN LEGAL SCIENCE: THE NEED FOR QUESTIONING UNDER UKRAINIAN LAW

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**Abstract:** *Everyone is born equal and expects to be treated similarly before the law in cases involving criminal activity and other obligations. It is problematic to have some people immune to legal consequences because they enjoyed special treatment in the eyes of the legislation meant to protect them. The issue we must bring up is crucial, as there is always the need to conduct a thorough investigation into the commission of crimes to secure justice. However, the tendency is that as far as immunity is on the individual concerned, this would frustrate the prosecution process. In this vein, it was proposed that this study investigate how immunity relates to today's state of the law. We will look at an analytical approach to determine if immunity's status has changed due to the rise of modern legal science. The paper overviews the legal framework adopted in Ukraine concerning immunity given to certain public servants.*

**Keywords:** *Legal Immunity; Human Rights; Modern Legal Science; International Law*

## INTRODUCTION

The choice of the research topic is determined by the fundamental and applied needs of legal science and practice development. In the scientific, theoretical plane, mastering the essence of immunities in legal science is determined by the formation of established ideas on the essence of this phenomenon, the definition of the species diversity of immunities in law, and the understanding of systemic connections with other concepts and categories of legal science. Moreover, in the practical plane of legal understanding, the concept of "immunity" is an important condition, firstly, for the protection of the rights, freedoms, and legitimate interests of persons to whom different types of immunity may be extended; secondly, to achieve justice, to ensure equality of citizens before the law during court proceedings; thirdly, for the further development and modernization of certain legal institutions, for example, the legislative or judicial branches of government, and more.

It is necessary to be aware that within the law, there is a stable systemic connection between such concepts as "immunity" and "independence". At the same time, the relationship between these legal definitions is complex because immunity is a critical condition and an important legal guarantee of ensuring the independence of special subjects, which must be objective and impartial during law enforcement. Secondly, immunity is a complex

interdisciplinary legal institution in which international, constitutional, legal, and criminal-procedural elements are distinguished. Thirdly, the currently existing types of legal immunities are not absolute. The parameters of action in time and the peculiarities of the immunity termination procedure determine their teleological component. Investigating the issue of criminal liability of judges for crimes against justice in the context of the Nuremberg trial, W. Kulesha (2013) noted that:

Regarding the judges, the Tribunal recognized that they could not invoke the principle of judicial immunity because the doctrine according to which judges are not responsible for their activities was built on the principles of independent justice, and the judicial function in the Reich was significantly limited. After all, the judges acted as bodies of the state administration, per the authorities' clear directives, and focused on implementing the government's plan to exterminate Poles and Jews (p. 42).

There is no uniform approach to the regime of judges' responsibility. These approaches vary from the most loyal to judges (in England and Wales), where judges can only be punished by disciplinary action. A higher court review can only change their decisions to the strictest ones (in Moldova and Spain), where criminal liability is provided for making knowingly unlawful decisions (Dzehciarou 2020).

## THE PURPOSE AND OBJECTIVES OF THE RESEARCH

The purpose of the study is the scientific elaboration of the immunities in law essence. Achieving the represented goal requires the consistent solution of several research tasks, namely: a) to investigate the origins of the concept of "immunity" in domestic jurisprudence of the second half of the XIX-XX centuries; b) to reveal modern scientific and conceptual approaches to understanding the essence of immunity in modern legal science; c) to highlight and analyze the classification of immunities currently proposed in legal science. Indeed, it remains the rule that it is the law's responsibility to ensure a sufficient investigation is carried out to determine those liable for the act committed, but this is problematic as the presence of immunity always presents a barrier in the enforcement and implementation of the criminal justice system. The fact is that law has provided modern approaches and techniques in affecting the criminal justice system, but what use will these approaches be if there is the constant presence of immunity which makes the criminal justice system process difficult and, to an extent, impracticable? The rule remains and will always stand that for the criminal justice system to be accessible and credible, it is the responsibility of those implementing the law to ensure that anything limiting its implementation and enforcement should be handled in that even immunity will not be an exemption. It remains the rule of law in certain cases, and circumstances for this aspect of immunity should be affected to properly apply the criminal justice system.

## METHODOLOGY

Mastering the essence of legal immunities determines the application of general scientific, specific scientific, and special legal approaches and methods of scientific knowledge of legal reality phenomena.

The dialectical method is fundamental among them, demonstrating the role and significance of the studied phenomenon within the domestic legal system. Systemic and anthropological approaches made it possible to understand the inextricable connection between scientific work and achievements of legal scholars of the past eras with modern scientific and conceptual approaches to understanding the essence of immunity in modern legal science. The axiological approach demonstrated the legal and significant social value of legal immunities.

Scientific pluralism contributed to accumulating and generalizing a broad range of legal theory and branch legal sciences knowledge to reveal the essence of legal immunities. Thanks to the institutional approach, guarantees of impartiality and independence of judges have been characterized. The classification and generalization method helped reveal the multifaceted nature of immunities in law.

The uniqueness of the research subject caused the application of special scientific methods of cognition (hermeneutic, logical semantic, and formal logical). Special legal methods (legal technical, normative dogmatic, comparative legal) played a significant role when analyzing legal acts related to regulating one or another type of immunity. The fact that modern legal science is a fundamental concept nowadays in ensuring the proper application of the criminal justice system through its various approaches, techniques, and mode of operation, it becomes frustrating when there is the presence and existence of legal immunity. One thing for sure is in providing a methodology to be used in effecting the results and outcome of a research, and the other is in ensuring the proper application of this methodology that will reveal the needed results expected. The laws are clear when dealing with modern legal science in carrying out the investigative process for the purpose of justice. However, what significance would it have if these contemporary investigative techniques were successfully given that legal immunity thwarts their deployment and renders the criminal justice system unworkable?

## RESULTS AND DISCUSSION

The problem of effective provision of the protection of the aggrieved person's rights has always existed. However, as historical events testify, the Second World War radically changed views on guarantees of world peace because humanity understood the true value of human rights and freedoms, which led to a fundamental update of the legal mechanism for their protection. Starting from that time, protecting human rights is not a purely internal competence of states. It has gained international significance, embodied in the idea of creating a new international law and order, the basis of which is the respect for fundamental rights and freedoms (Ablamskyi et al. 2020).

In modern society, the equal legal status of women and men, as well as equal opportunities for the realization of gender equality, have long become commonplace in public

discourse and politics. Ukraine is one of the countries where the equality of men and women is enshrined in the law (Klemparskyi et al. 2022). The protection of the honor and dignity of a person is of exceptional importance for ensuring an appropriate mechanism for exercising the personal, intangible rights of subjects.

Today, the state is the only entity authorized to carry out legislative regulation of social relations and, accordingly, to apply legitimate coercion to ensure human rights and freedoms. In this regard, the function of administering justice, which is aimed at restoring the violated rights, freedoms, and legitimate interests of all subjects of social relations, is assigned exclusively to the competence of the state. This thesis is reflected in the provisions of the Basic Law, according to which Ukraine is a democratic, social, and legal state, and all citizens are equal before the law with no privileges or restrictions based on race, skin color, political, religious and other beliefs, gender, ethnicity, and social origin, property status, place of residence, language or other characteristics. Even though the Constitution of Ukraine establishes the equality of all citizens before the law, the activities of a separate category of persons involved in performing fundamental tasks and functions of the state require additional legal guarantees. For this purpose, the Basic Law of our country and special laws enshrine additional legal guarantees for the activities of such persons. For this purpose, the Basic Law of our country and special laws enshrine additional legal guarantees for the activities of such persons. At the same time, the norms of the Constitution of Ukraine do not exclude the possibility of bringing them to criminal responsibility but only establish a special procedure regarding this issue. Among other things, this also applies to the special procedure for the detention of persons enjoying immunity, which include, in particular, People's Deputies and the President of Ukraine.

As noted by Y. Kuzmicheva (2014, 107), the activity of certain state bodies is aimed at ensuring the functioning of the main state institutions, ensuring the unhindered and effective performance of their functions. We support this position since the functional activity of some categories of persons in the state mechanism occupies a particularly important place because it ensures the implementation of legislative, executive, and judicial functions.

In this context, the statement of M. Pogoretskyi and O. Starenkyi (2017, 80) regarding the fact that to implement fundamental functions by certain state bodies, the legislator provided for a special procedure for carrying out criminal proceedings against certain categories of persons who, due to their procedural status, are endowed with appropriate immunity, which protects them from possible illegal pressure and obstruction of professional activities. Indeed, in general, the legislator's logic on this issue remains clear since it is difficult to assess the negative consequences of illegal influence on a People's Deputy of Ukraine or the President of Ukraine, who, according to Article 102 of the Constitution of Ukraine is a guarantor of state sovereignty, territorial integrity, and observance of human and citizen rights and freedoms.

### **Modern Legal Science and the Recognition of Immunity**

The principle of equality requires the provision of equal opportunities, the creation of real opportunities by the members of society to compete with each other with good chances of success due to equality before the law and the court, equality of human rights and responsibilities, compliance with the principle of non-discrimination (Shtonda 2019, 47). This principle is



fundamental to a person's and a citizen's legal status. It acts as a principle of the rule of law and as a political and legal basis of civil society. It is a special form (regime) of legal balance based on balancing people's interests.

The equality of all people before the law can be considered one of the most important principles of legal statehood. However, it should be noted that in most developed democratic states, primarily to protect constitutional and legal values, inequality of individual citizens before the law is allowed at the legislative level. This is manifested in granting legal immunity as a guarantee of activity to certain persons who perform important state and public functions. It provides a special procedure for bringing these persons to justice. Therefore, immunity is widely used in various spheres of life in society because it primarily concerns legal relations where human rights and freedoms may be limited. Despite the fairly widespread use of the term "immunity", there is no single point of view on its etymology. In the scientific literature, there are many options for defining this concept, referring to different features and considering the scope of its use. This category, including procedural spheres, is most common in constitutional, criminal, and administrative law. The norms of international law are important for characterizing legal immunity (Vasylchenko 2014, 59).

The legal nature of immunity is rather complex and ambiguous. Ukrainian legislation does not make a clear distinction between the concepts of "immunity" and "inviolability", and there is often a situation where the term "inviolability" is used to denote legal immunity (Shelever 2012, 779). Therefore, to operate the specified term properly, it is necessary to clarify the essence of the indicated term.

In one of the legal dictionaries, immunity is understood as the removal from the effect of certain general laws of persons performing special official duties in the state or the inviolability of diplomatic representatives and the premises occupied by them (Kudryavtsev 1956, 383). In the legal encyclopedia, immunity is a general legal term that exempts a certain circle of legal subjects from the effect of general legal norms (Hizhevskyy, Golovchenko, Kovalsky 2002, 191).

Legal immunity is a general legal category that consists of norms regulating the special legal status of individual subjects, establishing a special procedure for bringing them to justice to ensure that these persons perform important functions for the state (Shelever 2012, 782). It is worth agreeing with the proposed statement since the existing legislation currently operates with several concepts that do not have a legislative generalization regarding a clear understanding of inviolability, and diplomatic immunity, which have certain differences in scope.

In the legal sense, the concept of immunity is interpreted as the exemption of a certain circle of legal subjects from the effect of general norms, as the exclusive right not to obey some general laws, which is granted to persons who have a special position in the state, as well as the exemption of individual persons from the fulfillment of certain legal obligations duties and responsibilities established in specific norms of international law, the constitution, and laws. Legal immunity has two sides: on the one hand, it provides for the inadmissibility of reference to the official position of a person when committing an international offense, in particular, a transnational crime; on the other hand, immunity refers to the protection enjoyed by certain officials against the exercise of criminal jurisdiction by a court. The inadmissibility of reference to the official position of a person when committing an international offense is recognized as one of the main principles of international criminal law and criminal justice (Popko 2018).

Since there is no one approach to comprehending immunity in legal science, an examination of the scientific works of scientists in this field should be done to provide a comprehensive study of this concept.

Studying the theoretical and practical issues of parliamentarians' immunity institution functioning, V. Kolyukh (2015) notes that the science of constitutional law divides this legal phenomenon into two types:

1. Indemnity, which means that the deputy does not bear legal responsibility for introducing proposals, bills, and amendments to them; dealing with parliamentary inquiries; speeches from the parliamentary rostrum; voting in one way or another at plenary sessions of the parliament; statements and voting in parliamentary committees and commissions, etc. This happens both during the exercise of the deputy's powers and after the end of their term, without restrictions on the prosecution.
2. Immunity (from the Latin *immunitas*: release, freedom) means the legal inviolability of a deputy, the essence of which is that the deputy cannot be held criminally liable, detained, or arrested without the consent of the parliament. However, no European country has the same level of immunity as the People's Deputies of Ukraine (pp. 53-55).

I. Coldrus (2016, 202) considers immunity as a legal exception, which is intended to create a special legal regime for the subject of law, in the framework of which he/she is provided with additional guarantees when he/she is brought to legal responsibility or fulfills certain duties to implement particularly important international, state and social functions.

L. Tkalya (2010, 5) defines legal immunity as a separate form of legal exemption, within which a person endowed with special characteristics related to the performance of international, state, and public functions is exempted from the performance of certain legal obligations from legal responsibility or other coercive measures, and a special procedure for bringing to legal responsibility is provided.

According to the definition of V. Popko (2018), legal immunity is a general legal category that consists of norms that regulate the special legal status of individual subjects and establishes a special procedure for bringing them to justice to ensure that these persons perform important functions for the state. Legal immunity consists of two elements: irresponsibility and immunity. The core of the definition of "immunity" is inviolability - individual freedom and legal protection of the relevant subjects of law from measures of procedural coercion established by the norms of administrative, criminal, criminal procedural law (detention, search, arrest, etc.) to guarantee unhindered performance by these persons of their functions in society and the state.

Legal immunities can be considered as an independent form of legal exceptions, which are a system of legal exclusions from ordinary (general) or special rules, which creates a special legal regime for a clearly defined circle of natural and legal persons who are granted additional rights (privileges, benefits, legal benefits), or who are released from the performance of legal duties, legal responsibility, or the order of bringing to legal responsibility is characterized by a special nature (Vasylchenko 2014, 59). From this definition, it should be concluded that immunity is a kind of an exception to the general legal status inherent in a specifically defined circle of persons and exempts them from performing certain duties and legal responsibilities. At the same time, such exceptions directly depend on the nature of their activity.

Thus, there are quite a few definitions of the concept of legal immunity in the works of scientists. On the one hand, one group of scientists understand legal immunity as special benefits and privileges, mainly related to the exemption of persons specifically established in the norms of international law, the constitution, and laws, from certain duties and responsibilities to ensure the performance of their respective functions. On the other hand, there is an opinion that legal immunity is a legitimate exclusion in the field of legal responsibility, which is established in special regulations with the aim of the increased legal protection of a strictly defined circle of persons and ensuring the effectiveness of their activities in the performance of significant state and public functions, which includes inviolability and irresponsibility of the official.

Having analyzed the essence of legal immunities, summarizing scientific works on this issue, we can highlight certain characteristic features:

First of all, if privileges are to a greater extent embodied in advantages, so-called positive benefits, then immunities, on the contrary, appear in the form of negative benefits (exemption from the performance of certain duties - payment of taxes, fees, exemption from liability).

Second, immunity strives to secure the performance of official duties and those related to international, state, and public affairs.

Thirdly, the circle of persons to whom the immunity is extended should be clearly defined in the norms of international law, constitutions, and laws.

Having determined the multifaceted approaches to understanding the essence of immunity and its characteristic features, it is worth dwelling on the main features of legal immunity:

- Direct connection with the process of realization of legal responsibility. Immunity, to one degree or another, either completely exempts from responsibility or establishes special guarantees when involving responsibility and performing the relevant duties,
- Subjects covered by immunity. Being an exclusive legal category, immunity confers benefits only through legal means. The circle of subjects to which immunity is extended is strictly established in the norms of international law, constitutions, and laws, and only to the extent and to the amount that it is defined in international or domestic legislative acts,
- assignment of legal immunity. Legal immunity is aimed, first of all, at increased legal protection of a certain circle of persons to ensure effective activities in the performance of particularly important international, state, and socially significant functions,
- the scope of application of legal immunities is much narrower compared to legal benefits and privileges since legal immunity grants additional rights or exempts from obligations only in the sphere of realization of legal responsibility. In turn, the scope of application of such legal means of legal inequality as benefits and privileges is quite wide and covers many spheres of social life.

Taking into account the above, it can be stated that the most characteristic feature that distinguishes legal immunities from other legal exceptions is that, unlike benefits and privileges, it does not aim to obtain any material benefits for its owner but provides additional rights or exempts from obligations only in the sphere of realization of legal responsibility.

Continuing the research, the issue of the classification of immunities in legal science will be considered. Identifying types of immunities have theoretical and applied significance since each

type has its characteristics, which inevitably affect the expansion or narrowing of certain legal guarantees that can be extended to individuals.

Having analyzed the selected types of immunities, it can be seen that they mostly relate to ensuring the safety of certain categories of subjects (people's deputies of Ukraine, judges, diplomats, etc.) from illegal outside influence and also exempt them from the obligation to report information if it follows from their professional duties or may harm them or others.

Meanwhile, the limitation of parliamentary immunity in some states is the establishment of the so-called *In flagrante delicto*, when the parliamentarian is arrested during the commission of a crime and if he or she participated in it directly or indirectly (Pryplova 2015, 34). For example, Article 46 of the Constitution of the Federal Republic of Germany provides for the right to detain a deputy without the appropriate consent of the Bundestag in cases of detention at the scene of a crime or during the day following its commission. A similar norm is enshrined in the provisions of Article 26 of the Constitution of the French Republic (Kitsan 2017, 126). Analogous prescriptions are also contained in the legislation of Bulgaria, Lithuania, Moldova, Japan, and other countries. In our opinion, such legislative regulation of this issue is completely justified and appropriate; therefore, it should be considered when making relevant changes to the Criminal Procedure Code of Ukraine on this issue.

In the USA, the legislative practice of regulating the issue under study applies only to some types of offenses and only during the parliamentarian's stay at the session or on the way to the session and back. In particular, part 1 of section 6 of Article 1 of the Constitution of the United States of 1787 provides that in all cases, except in cases of treason, felony, and disorderly conduct, parliamentarians shall have the privilege of freedom from arrest during their attendance at the session of the respective house and returning from there; any speech or debate in each house of the US Parliament they cannot be asked in any other place (Kolomoiets, Martseliak, Marchuk 2009, 381).

As can be seen, the practice of legislative regulation of parliamentary immunity in foreign countries has a rather versatile character. However, in Ukraine, the inviolability of such persons is unprecedentedly extensive, which greatly complicates the investigation of crimes committed by them.

Thus, touching on the issue of species classification (division) of legal immunities in a domestic legal opinion, we should note that several researchers justify their approaches to this division. Based on the analysis of these approaches, we can note that the classification (division) of immunities by species is carried out in the following directions: depending on the nature of the functions they perform; depending on the scope of their implementation; depending on their character; depending on which objects immunity is provided; depending on the subject; on volume.

## CONCLUSION

Having studied the nature of legal immunities, it can be stated that they are considered multifaceted legal phenomena in today's conditions. Fundamental legal science pays considerable attention to the nature of immunities in law. Considering this, immunity in law has the following characteristic features:

- Direct connection with the process of realization of legal responsibility. Immunity, to one degree or another, completely exempts from responsibility or establishes special guarantees when involved in responsibility and performing the relevant duties.
- Circle of persons to whom immunity is extended. Being an exclusive legal category, immunity confers benefits only through legal means. The range of subjects to which immunity is extended is strictly formalized in the law.
- Assignment of legal immunity. First, legal immunity is aimed at increased legal protection of a certain circle of persons.
- The scope of application of legal immunities is much narrower than legal benefits and privileges since legal immunity grants additional rights or exempts from obligations only in realizing legal responsibility. Unlike benefits and privileges, it does not aim to obtain material benefits for its owner.
- They are established for performing the corresponding duties (powers) in the corresponding state position.

The most common in legal science is the classification of immunities in law by subjects with the corresponding immunity. Among the types of such legal immunity, the following should be distinguished: immunity of the state; diplomatic immunity (right of extraterritoriality); legal immunity of a special category of citizens (President of Ukraine, people's deputies, judges, etc.); witness immunity, and more.

Other approaches to the classification of immunities in law are the following: depending on the nature of the functions they implement; depending on the scope of their implementation; depending on their character; depending on which objects immunity is provided; depending on the subject, on volume.

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# GLOBAL CLIMATE CHANGE GOVERNANCE: A RETHINKING

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**Abstract:** *The decades of increased Green House Gas (GHG) emissions have increased global average temperature to 1.1 degrees over pre-industrial levels. In order to hold the global average temperature rise below 2 degrees Celsius and, if possible, 1.5 degree Celsius, the governments signed various treaties. However, countries' collective agreements to reduce their emissions were never kept. This study outlines why the method of mitigating global climate change has failed. The main problem was the inability to enforce goals and timelines. Ideas for even tighter emission limits will be ineffective unless they solve the enforcement gap. Trade restrictions are one method, but they introduce significant complications, particularly when used to enforce economy-wide carbon reduction agreements. The applied methodology is qualitative. This study proposes a novel strategy to unpack the climate challenge, targeting various gasses and industries with various instruments. It also illustrates how failing to address the climate problem fundamentally would generate incentives for various solutions, offering new problems for climate change governance.*

**Keywords:** *Climate change; Developing Countries; Governance; Sustainable Development; Global*

## INTRODUCTION

By every reasonable standard, the efforts to combat climate change have failed. Participants at a quasi-political meeting in Toronto in 1988 agreed that global carbon dioxide (CO<sub>2</sub>) emissions should be decreased by 20% from 1988 levels by 2005. Even though two climate accords had gone into effect and other unilateral objectives had been set, global emissions grew by 32% through 2004. This large disparity (50 percent) growing up quickly should cause negotiators to reconsider their strategy. So, too, should the finding that air concentrations have risen year after year since monitoring began in the late 1950s. As the Kyoto Protocol is implemented, neither trend will alter.

So far, the strategy has been to set economy-wide objectives and timelines. This technique would be excellent if it were feasible to manage global greenhouse gas emissions from the top down. Unfortunately, the world's governing structures must operate from the ground up. There is not just one government globally; there are roughly 200. A deal to cut emissions must be appealing, not simply for the sake of the global good. It must also be something individual countries choose to accede and adhere to. In this paper, we have attempted to depict why the current strategy has failed and how an alternative approach may perform significantly better.

## BACKGROUND

What should the purpose of climate policy be? Inaction on climate change will have consequences for present and future generations, but so will act on climate change. Economics attempts to balance both sides of this equation. Economists generally agree that emissions should be lowered today below the “business as usual level” (there is controversy about the specific amount of emissions reduction that is warranted). There is also widespread agreement that greenhouse gas concentrations should finally be stabilized (opinions differ on what this degree of stability should be and when it should be attained) (Nordhaus 2007).

Chemical equilibrium in the atmosphere and seas is required for stabilization. As emissions decrease, ocean take-up will decrease over time. Net emissions must fall to zero in equilibrium if concentrations are to be stabilized. There is only one method to accomplish this in a fashion acceptable to most of any country’s voters. There must be a technological revolution at some point (Hoffert et al. 2002). A future treaty agreement must keep this long-term goal in mind. So far, the strategy has been to concentrate on a goal represented in terms of concentration levels (perhaps with the further goal in mind of limiting temperature change). Because net emissions influence concentrations, negotiators have expressed short-term goals regarding individual nation emission limitations.

Regrettably, because each country’s emissions constitute such a small proportion of the total, the incentives for countries to act alone are limited. To make matters worse, when some nations cut emissions, competitive advantage in greenhouse gas-heavy businesses will migrate to other countries, leading their emissions to rise. To businesses, this means a loss of “competitiveness”. To environmentalists, it signifies “leakage” of emissions. International collaboration is required for both reasons: to discourage free riding and to avoid leaking. This will have to take the shape of a treaty or even a series of treaties.

A treaty must meet three characteristics to be successful: first and foremost, it must elicit widespread engagement. A pact to control emissions must, at the very least, include the United States, the European Union, Japan, Russia, China, and India. Second, it must verify conformity. Finally, it must do both while asking its parties to alter their conduct significantly. A treaty can easily fulfill one or two of these requirements. It is quite difficult for a treaty to accomplish all of these. Kyoto falls short of all of them.

## KYOTO’S PROTOCOL

Kyoto has failed to elicit widespread engagement. It has, in particular, failed to get the United States to join. This is to blame on the Bush administration. However, before Kyoto was negotiated, the US Senate passed a non-binding resolution stating that the US should not be a signatory to any treaty that “would result in serious harm to the economy of the United States” (Committee on Foreign Relations, United State Senate 1998) or that did not mandate “new specific scheduled commitments to limit or reduce greenhouse gas emissions for Developing Country Parties within the same compliance period” (Committee on Foreign Relations, United State Senate 1998). This non-binding vote was carried 95-0. As a result, even before Kyoto was negotiated, it was evident that the United States would not approve it.

Kyoto also failed to assure that the countries who approved it would follow through. Canada is a signatory to the Kyoto Protocol, which requires it to cut emissions by 6% below 1990 levels between 2008 and 2012. However, Canada's emissions were 30% higher than this objective in 2005, and the country's current administration has abandoned the notion of attaining the Kyoto target. Its goal is to slow the pace of the rise in emissions, with the hope that emissions will peak around Kyoto's midpoint in 2010. Even this basic aim sounds optimistic; a government-funded discussion found that the government's measures will fall short of even this modest target.

Kyoto's parties have failed to take significant action. The Framework Convention on Climate Change is nearly at capacity (the only non-participants are Andorra, the Holy See, Iraq, and Somalia). Furthermore, compliance with this agreement is flawless. Nevertheless, this agreement does not force countries to cut their emissions. The Framework Convention is an example of a treaty that meets two of the three success criteria.

Kyoto sought to do more but succumbed to the same forces that weakened the Framework Convention. China and India are both signatories to the Kyoto Protocol, and both will completely comply with the accord, but only because Kyoto does not oblige them to lower their emissions. Russia and the transition economies were granted an excess of emissions, which environmentalists call "hot air". The emission limits do not affect them. Getting these nations to participate in Kyoto is far from a success.

Other nations are obliged under Kyoto to cut their emissions, but the pact does not compel them.

Canada will not comply because Kyoto asks Canada to decrease its emissions significantly. Compliance will also be tough for New Zealand, which has yet to adopt a policy for achieving its responsibilities, and Japan, which claims to have done much to decrease emissions but is still far from meeting its objective. Although the government has not admitted it, there is a significant probability that Japan, the host of the Kyoto discussions, would not comply.

Compliance by certain European Union members looks to be difficult as well. Spain has the widest disparity of any country. Denmark has fallen well short of its individual goal. However, because of the European "bubble" and significant reductions by other EU nations (for reasons unrelated to their climate change policy), these countries are not constrained by their individual restrictions as long as the original 15 EU Member States fulfill their aggregate limit. Australia just accepted the Kyoto Protocol, but because of the provision for land use, land-use change, and forestry (known as LULUCF to climate insiders), Australia is already within its Kyoto limit; Australia will have to do so very little, if anything, to comply.

A review of the discussions after 1997 reveals a similar trend of countries attempting to alleviate their duties or the necessity to fulfill their obligations. Following the announcement by the United States that it would not ratify Kyoto, Canada and Japan insisted on a liberal accounting of their "sinks" (that is, LULUCF) as a prerequisite for ratification. Russia, which had already received "hot air", hoped for more. Furthermore, Russia insisted on getting EU backing for its World Trade Organisation entry.) This treaty renegotiation succeeded in putting the agreement into force, but at the expense of decreasing the pact's environmental effectiveness - an example of one success criterion being traded for another.

Today, because of post-1997 talks that lifted trade barriers, compliance with the Protocol's "flexible procedures" is still quite simple (again, following the decision by the US not to ratify). If compliance is accomplished by purchasing "hot air", emissions may not be reduced. Under these conditions, it is difficult to understand why a government would choose this option to comply (why pay to conform when the money does not assist the two climate accords in achieving their goals?) - another reason why some countries' compliance is in peril.

Within their Kyoto constraints, nations tend to portray themselves as more effective at meeting their responsibilities. However, the Kyoto limitations were calculated using 1990 as the base year, which favored certain nations over others. The discrepancies between nations would be less apparent if attention were focused on the activities states have done rather than whether or not they have kept within their Kyoto boundaries. More significantly, from the climate standpoint, individual state emissions are meaningless. Climate success should be judged in terms of global emissions (or, better still, atmospheric concentrations), and these trends, as previously said, are in the wrong direction.

### THE UNITED STATES LEADERSHIP FAILURE

The United States' lack of leadership has also stymied global growth. As previously stated, seeing the US' non-participation in the Kyoto Protocol as unusual is simple. Simultaneously, the US has failed to give leadership, which has been a global setback. To be more explicit, the United States has failed to (1) draft a pact that might be approved; (2) pass important domestic climate legislation; and (3) present an alternative to Kyoto. Although George W. Bush's administration championed R&D and assisted in the formation of the Asia-Pacific Partnership on Clean Development and Climate (which includes Australia, Canada, China, India, Japan, and South Korea), none of these initiatives have yielded results. The Bush government, for example, recently canceled plans for its FutureGen pilot "clean coal" facility, claiming \$900 million in cost overruns. A superpower has every right to expect more from the rest of the globe. This matter will be taken seriously by the future administration. However, US leadership is merely a required condition for progress on this issue; it is insufficient. The most significant roadblock to progress is enforcing a future climate change deal.

### THE IMPORTANCE OF ENFORCEMENT

The following example illustrates the necessity of enforcement: in 2002, the United States put tariffs on steel imports. The European Union filed a complaint with the World Trade Organisation (WTO), which found that the US tariffs violated WTO norms. Should the US refuse to withdraw its duties, the EU can "rebalance" the effect of the levies under those regulations. Because the United States failed to comply with the WTO judgment, the EU devised a tariff package to offset the US tariff. The EU tariffs were to be implemented in December 2003, less than a year before the next US presidential election (recall that Florida was a "battleground" state in the contentious 2000 election). President George W. Bush lowered duties on steel imports just before the EU penalties were about to go into effect. The EU never slapped tariffs on the United States; the credible threat of doing so was enough to persuade the US to comply



with the WTO verdict. This trade pact is effective; it alters the behavior of states. It was in the EU's best interests to penalize the US, and it was in the US's best interests to cooperate while facing this penalty. Both nations were also enticed to stay in the pact by the accord. The Kyoto Protocol provides neither type of incentive. Rather than focusing on incorporating such systems, negotiators have sought to negotiate tighter emission restrictions in response to previous failures. The EU campaigned for wealthier nations to reduce their emissions by 25-40% in Bali (Arga 2007). This suggestion aligns with the belief that Kyoto's problem is that the caps are too liberal. Emissions must undoubtedly be lowered significantly, but would Kyoto have been more effective if the caps had been more difficult to meet? Is it possible that this would have increased the likelihood of the United States participating? Would Canada have been more likely to cooperate if this had been the case? Kyoto's flaw is in its design rather than (primarily) in its objectives. The difficulty of implementing emission limitations is one example of the problem.

Kyoto's caps were agreed upon in December 1997, but critical specifics were still being worked out for years. In 2001, a compliance method was agreed upon. However, any system for ensuring compliance "with binding consequences" must be authorized by modification, according to Article 18 of the Kyoto Protocol. An amendment functions similarly to a new agreement. It would only be binding on the countries who approved it, assuming that at least three-quarters of the Kyoto Protocol parties also ratified it. No such amendment has been passed so far. As a result, the method agreed upon in 2001 is non-binding.

It would have no effect even if the mechanism were binding. The mechanism's key component is a 30 percent penalty. A nation that emits 100 tonnes more than the treaty permits in the first "commitment period" (2008-2012) must make up the difference by decreasing emissions by an additional 130 tonnes in the next term (2013-2017). This decrease is "extra" to the next-period cap for this nation. This cap, on the other hand, is contingent on the permission of the country that must pay the penalty. As a result, that country can demand a liberal limit as a condition of participation and avoid incurring a "phantom" penalty. Alternatively, it may ratify the new pact and fail to comply again - the existing system effectively drags the punishment forward indefinitely. Because the sanctions must be self-inflicted, this penalty system cannot dissuade non-compliance. Of course, this is not the case with WTO sanctions.

However, there is one exception. Other nations can also suspend a country's trading rights under Kyoto's non-binding compliance mechanism. Is this a fair punishment? Is this a sentence that other countries would impose? There is a strong reason to think they would not (Kellbakken and Hovi 2007).

If a significant seller of permits were to lose its trade powers, international permit prices would rise, damaging net importers; these governments may be hesitant to enforce the punishment. International permit prices would decrease if a significant buyer of permits were penalized in the same way, damaging net exporters; these nations may be hesitant to implement the punishment. In other words, the threat of retaliation may not be believable. In each scenario we just named, some countries would benefit from implementing the consequences (net exporters in the first instance, net importers in the second). However, with some nations benefitting and others losing, the sanction's implementation may generate strife among the countries who had obeyed.

It should be noted that the situation described here is comparable to the difficulty that Eurozone countries had in implementing the Stability and Growth Pact. This agreement's enforcement mechanism was not trustworthy (Barrett 2005).

Because, as previously stated, trade restrictions are used to enforce the WTO, should trade restrictions be used to enforce Kyoto's successor? The concept is appealing. France's President Sarkozy has recommended that trade restrictions be examined. Nobel laureate economist Joseph Stiglitz has advocated for its adoption (Greenwald and Stiglitz 2006).

Trade restrictions may serve two purposes: preventing leakage and encouraging participation (deterring free riding). A "border tax adjustment" would support the former goal while helping the latter. A blunter tool would be meant to increase involvement, but if it successfully maintained full participation, it would minimize leakage.

Unfortunately, border tax modifications would be difficult to implement. They must be based on the emissions produced while manufacturing traded items. It would be tough to calculate these quantities. Two identical items made in the same nation might have vastly different "carbon footprints" (depending, for example, on how the electricity used as an input was generated). Cruder computations may be considered, but sector-specific taxes would be extremely difficult to calculate (Hoel 1996). Furthermore, as trade restrictions got more stringent, they would be less successful in controlling leakage.

Blunder penalties may also fail. Punishments are designed to compel participation to raise additional issues. The limits would have to be severe and credible, and sanctions often grow less credible as they become harsher (Barrett 2005).

This is what caused the Stability and Growth Pact to fail. Of course, as previously stated, the World Trade Organisation's enforcement system is successful. Conversely, trade is a bilateral activity, but climate change is a worldwide public good. Trade barriers were also employed to compel the provision of another global public benefit. A trade restriction implements the Montreal Protocol on Substances that Deplete the Ozone Layer. However, the nature of this threat differs from that of climate change.

Montreal, for example, controls consumption more than just output (production plus imports minus exports) (Kyoto restricts only the emissions released by production). Furthermore, while the Montreal Protocol allowed countries to impose trade restrictions on whether ozone-depleting compounds were produced during product manufacturing, experts judged this was unworkable. It was also, thankfully, unneeded. As previously stated, such limits are necessary to combat climate change. They would also be extremely difficult to compute for the reasons stated above.

It is also possible to doubt the legality of a trade agreement enforced via trade restrictions. Who should decide what a country is bound to do? Who should decide on the appropriate punishment if a country fails to meet its obligation? Legitimate trade restrictions may only lead to retaliation - a trade war. The United Kingdom's decision to address the issue of climate change before the United Nations Security Council hints at the likely reaction to a climate change treaty that includes economic sanctions. The other three permanent members of, China, Russia, and the United States, were unfazed by Britain's choice. Other nations who were not represented on the Security Council responded strongly, believing that the problem should have been resolved by the General Assembly, where each country has one vote. The

meeting ended without a single declaration, much less a resolution. If one group of nations tries to force a climate deal on another by threatening trade sanctions, a greater response is feasible, if not likely.

Finally, in addition to participation, trade restrictions must ensure compliance. Participation would otherwise become a way to avoid having to decrease emissions. Will parties accept this in a future climate treaty? Would the Kyoto Accord parties agree to this, given that several are currently in jeopardy of failing to comply? Negotiators must be prepared to examine other possibilities if effective measures of implementing a post-Kyoto deal of the same type cannot be established.

### SUGGESTIONS FOR A BETTER APPROACH

The emission of both ozone-depleting chemicals and their alternatives, as well as stratospheric ozone, have varied effects on climate change. The accounting was done recently, and the total effect of the Montreal Protocol on greenhouse emissions was found to be beneficial. Indeed, even assuming that Kyoto is implemented precisely and with full involvement, the analysis calculates that the Montreal Protocol has been and will continue to be far more beneficial in tackling climate change than the Kyoto Protocol. According to this report, the Montreal Protocol has already decreased greenhouse gas emissions by four times what the Kyoto Protocol aimed for. HFCs, a strong greenhouse gas banned by Kyoto, have been engaged in most emission reductions under the Kyoto Clean Development Mechanism (CDM). Unfortunately, “buyers” have overpaid significantly under the CDM. According to one estimate, the CDM’s phase-out of HFCs will cost €4.6 billion more than required (the actual cost should be less than €100 million) (Wara 2007).

Manufacturers gain more money under the CDM by lowering HFC emissions than by manufacturing HCFCs. As a result, developing-country manufacturers have increased their manufacturing of HCFCs to profit from the reduction in HFCs generated as a consequence. Notably, a pact with no intention of addressing climate change has shown to be more effective than the Kyoto Protocol. This shows that it might have been more effective if Kyoto had been constructed differently. The Kyoto gases, namely hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphurhexafluoride (SF<sub>6</sub>), are also among the Montreal Protocol’s restricted substances (they are also used as refrigerants for expanding foam, and for insulation). That implies they could have all been managed and finally eradicated using a strategy similar to Montreal’s. This strategy will not work for the other greenhouse gases included by Kyoto. However, because Kyoto bundles all of the gases together, the possibility of cutting the three industrial gases’ emissions cost-effectively and internationally was overlooked. The lesson is that reducing greenhouse gas emissions may need more than one treaty and many treaty designs.

As previously said, solving climate change necessitates a technical revolution, i.e., basic research, development, and diffusion. Kyoto provides just a small amount of “pull” incentives for innovation. However, even if these incentives were stronger, they would not be enough to spark a technological revolution. To accomplish so, it will need fundamental knowledge - the type that cannot be trademarked. Basic knowledge will require government-funded research and development - a “push” motivation.

On the other hand, the benefits of investing in basic knowledge will be contingent on the spread of technologies that represent this new understanding. As a result, technological R&D initiatives must be strategic. They must be aimed at widely disseminated technology. Some R&D can be done independently (when the technology offers national benefits in addition to those related to climate change mitigation). Some research and development will necessitate international collaboration. The International Thermonuclear Experimental Reactor, now under construction in France, is an example of the latter type, with an unclear and long-delayed payback.

R&D also solves another issue with the Kyoto strategy. Short-term emission objectives do not stimulate a long-term investment. They also do not make accomplishing long-term goals any simpler. R&D has a distinct impact. It decreases the future expenses of decreasing emissions. As a result, doing R&D today increases the abatement that will be done later. In other words, a post-Kyoto climate deal must provide both push and pull incentives for research and development.

Changes brought about by a new treaty must also be long-term. Kyoto's limits are set to expire in 2012. Even Kyoto's parties are not obligated to reduce their emissions after that. Not only does this method fail to foster innovation. It also raises the possibility of reversal. The incentives must be different if the long-term goal is to spark a technological revolution. A pact should ramp up the required activities while avoiding backsliding. This is exactly what the Montreal Protocol accomplished. If the goals are articulated as emission limitations, it may be impossible for a climate pact to achieve this. It may be simpler if the objectives are stated differently, such as through technological standards. Technology standards, it is frequently alleged, have the opposite problem: they lock people in. The evidence, on the other hand, shows differently. A series of technical agreements have expertly safeguarded the waters from oil spills. Climate negotiators should consider how this method would work in a post-Kyoto accord. A new deal must also provide incentives for major, fast-growing companies to take steps to reduce their emissions. The Bali Action Plan cites the developing nation's ability to take "nationally relevant mitigation activities (...) backed and facilitated by technology, money, and capacity building" (Arga 2007). This should be a top priority. It must be a top priority, partially due to political considerations. Europe has constantly stated that it will decrease emissions even further if the United States and other OECD nations agree to attain the same goals. The United States, on the other hand, has stated that it will only intervene if fast-growing emerging countries follow suit. The political task is to bring these contradictory pledges together. They have merely been used as justifications for little, if any, action thus far. Meeting any global objectives would also require getting fast-growing emerging countries to decrease their emissions.

These countries' emissions are increasing at a faster rate than those of developed countries. China is presently the world's greatest carbon dioxide emitter. It has massive coal reserves and puts one to two coal-fired power facilities online weekly. China has added more coal-fired power production capacity in a year than the United Kingdom's installed capacity. China's new coal-fired power facilities have a 40-50 years lifespan. It may be essential to retrofit these (and other) facilities with carbon capture and storage technology to considerably cut world emissions throughout these plants' lifespan. That technology has not been perfected yet.

R&D is required not only to create the technology but also to illustrate how it may be applied in certain circumstances (local geology, CO<sub>2</sub> pipeline construction, etc.) and to assess its hazards (as regards escape but also ecosystem damage for ocean storage). Of course, international financing will be required, and securing this will be another collective action issue. However, developing technical standards with finance for “incremental costs” may be easier than alternative techniques like the CDM. The Montreal Protocol Fund has transferred over \$2 billion using this method.

The Bali Roadmap offers a chance for significant change. The developed nations, according to Bali, either agree to “quantified emission restriction and reduction targets” (Arga 2007), as in Kyoto, or they can agree to “actions”. Carbon levies, sectoral methods, and technological standards are likely to be included in the latter. It is crucial to take action. Targets and schedules are only useful if they motivate governments to achieve them (Joseph and Stavins 2012). The Bali Roadmap laid down a plan for discussions that concluded between 7-18 December 2009 at the Copenhagen Conference of the Parties. Delays in drafting a new agreement (or a series of accords) increased pressure on Kyoto (making compliance even more unlikely). However, it became more vital to develop a regime that includes the United States than to act swiftly.

The Senate must approve by a two-thirds majority to ratify a treaty in the United States. This equates to 66 votes. Domestic legislation has a lower approval bar, requiring only 60 votes. Treaties are seldom rejected by a vote of the people (the last treaty to be voted down was the Comprehensive Nuclear Test Ban Treaty at the end of the Clinton administration). Should the administration fear rejection, they are more likely never to be sent to the Senate (as was the case with Kyoto during the Clinton administration, though it should be noted that the accord terms were not finalized until after George W. Bush took office).

The mechanics of the US system suggest that, rather than negotiating an emissions-reduction treaty and then expecting the US to ratify it, it might be preferable for the US to pass domestic legislation first and then ratify a treaty that incorporates the emission limits (or actions) already approved by domestic legislation. However, the US Senate may ratify a different type of treaty. As stated previously, other types of treaties (such as research and development or technical standards agreements) may be required to meet the basic problem of climate change.

## CONCLUSION

This study is concentrated on the necessity to minimize emissions. Other acts, such as adaptation, are, of course, required. However, adaptation has received increased attention recently because the world has failed to manage global emissions. This serves as a reminder that whether we succeed or fail in reducing emissions will not automatically result in “climate calamity”, as is sometimes asserted. Other modifications will result as a result of this. Adaptation will be favored since it helps the country. The most difficult aspect of adaptation is persuading affluent countries to help developing countries finance adaptation.

Another option that may be preferred is “air capture”, which refers to technology directly removing CO<sub>2</sub> from the atmosphere. These technologies do not currently exist, even as pilot projects, and developing and using them will be costly, but they offer two benefits. They can be

separated from energy systems, for starters. The second advantage is that they may be completed as a massive job. These technologies, on the other hand, provide the world with a new issue. Because air capture may lower atmospheric concentrations rather than restrict their growth, it poses a governance challenge: which nations should be permitted to decide on the "optimal" level of atmospheric concentrations?

Geoengineering is another option that will become increasingly appealing. Lowering the quantity of solar energy that touches the Earth helps mitigate the warmth caused by growing concentrations. It may be done as a single project, similar to industrial "air capture" (Khosroabadi et al. 2021). However, unlike "air capture", certain geoengineering solutions are low-cost. They may also have a short-term impact on the climate. As a result, geoengineering is more likely to be deployed. However, geoengineering has many drawbacks. It would deal with the effects of climate change rather than the causes. It would be ineffective in addressing the associated issue of ocean acidification. It would mean starting a new worldwide experiment to compensate for the failure of the previous one (rising atmospheric concentrations of greenhouse gases). As solar geoengineering is affordable, governments may opt to implement it unilaterally. On the other hand, it has the potential to reverse global warming. Like air capture, the challenge with geoengineering is governance: which countries should decide if and under what circumstances solar geoengineering should be attempted.



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# THE EU AS A GLOBAL ACTOR IN SUSTAINABILITY POLICY: ANALYZING THE EU'S LIMITED BUT POTENTIAL INFLUENCE IN IRAQ AND SYRIA

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**Abstract:** *The role of the EU in sustainable development has been generally seen as influential so far. The EU has proven its commitment to promoting sustainability abroad, and the EU has embarked on a transition to a low-carbon society at home. The Middle East lags behind all regions regarding sustainability due to ravaging economic, security, and social challenges, particularly in Iraq and Syria. As the economic nature of the petro-states, the petroleum price influences the GDP and economic growth not only for Iraq and Syria but the majority of resource-based economies. This creates fragile economies that are less resistant to international financial crises. Moreover, petro-states have few economic characteristics, including; high capital intensity, centralization and control of revenues, and low demand for labor. At the same time, oil has special effects on domestic conditions like authoritarianism and the temptation for civil war. This study focuses on the role of the EU in sustainability policy towards Iraq and Syria. This study highlights how the European Green Deal (EGD) influences the path to sustainability in the Middle East, specifically in Iraq and Syria. In line with this, the analytical framework discusses the logic of social actions (consequentialism and appropriateness), which are at play in EU-Middle East relations. Thus, it contributes to the role of the EU as a leading actor in global sustainability governance, focusing on a region that has been largely neglected.*

**Keywords:** *European Green Deal; European Union; Iraq; Syria; Climate Change*

## INTRODUCTION

Mitigating the negative effects of climate change requires sustained innovative political leadership by a wide range of actors at different levels of governance. Climate change is a threat and an opportunity for innovative technologies to mitigate climate change (Wurzel and Connelly 2011). Making the European energy transition an opportunity for all might not be impossible, as European action influences conditions in petro-states. In general, petro-states generate income from oil and gas because these commodities dominate their economies; thus, the “petro-states are vulnerable to severe boom-and-bust cycles” (Campbell 2012).

Most importantly, the European Green Deal (EGD), introduced by the European Commission in 2019, aims to decarbonize Europe. Climate policies have regressive effects on resource-based economies such as Middle Eastern oil producers. The speed of the energy transition is far slower to mitigate climate change, yet very fast for the fossil-fuel industry to adapt (Hafner and Tagliapietra 2020).

Not only the European Union (EU) but almost all advanced economies, including China, have started focusing on adjusting their infrastructure to adapt to the green transition. While oil-producing countries might handle the economic challenges in the short run, enduring the long-term economic challenges will cost them a lot. Fossil fuels are the primary source of income for governments in the Middle East, particularly in Iraq. The EU has been affected by crises in the Middle East; thus, the EU has focused on working on potential threats to the energy supply shortages, especially with the recent Russian-Ukrainian war, in which the European Commission proposed a REPowerEU plan that aims to diversify gas supplies, and import from non-Russian suppliers (Morrow 2022).

Before climate change concerns, oil price and supply security have been the main challenges for European economies for many decades, while XXI century initiatives are rather associated with ending fossil fuel legacy. According to Lovins (2011), fossil fuel is drawing to a close; it is time for something different, where transportation and electricity are transformed, and the world no longer relies on fossil fuels. Among the seven main reasons behind energy, the transition to “less energy dependency” has been a long-term carbon strategy. That is beside the main goal of decarbonization lead, which has made the EU economy 20% less carbon-intensive than in 2000 (European Investment Bank 2019).

Align with all this, implementing the EGD will bring out serious economic challenges for petro-states in the Middle East. The main concern for the major oil producers such as Iraq is not just losing the European market. However, transitioning to renewable energy would shift global energy consumption from fossil fuels to renewable commodities. Thus, the EGD is a significant turning point in changing the future of the petroleum industry in the Middle East as it causes economic difficulties for major oil producers like Iraq, Iran, and Saudi Arabia (Bianco 2021). Meanwhile, the Gulf Cooperation Council (GCC)<sup>1</sup> is more concerned than the other Middle Eastern countries, even though the EU receives just 4% of GCC oil and gas exports. Meanwhile, there is hope that the EGD can contribute to the constructive development of the Middle East and create opportunities for sustainable development in the region (Bianco 2021).

The EU as an important global player has pushed for strong international and regional agreements regarding climate change. Indeed, the EU has been pictured positively in global climate governance, and most countries expect support from the EU regarding climate governance (Torney 2015). However, expecting a win-win situation for each country in climate governance would be impossible, and the EU’s influence is also rather limited in the Middle East. However, the EU has good trade and economic relations with the Middle East, and many Middle Eastern countries accept the EU’s leadership in international climate governance. The acceptance is structured by EU consistent aid, investment, and support which has been high in quality and quantity. While the EU needs to improve, strategic communication with the Middle Eastern states to achieve regional and mutual goals can strengthen the EU’s role in the context of EGD in the Middle East (Dacey and Lovatt 2022).

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<sup>1</sup>Gulf Cooperation Council (GCC) is political and economic alliance of six Middle Eastern countries: Saudi Arabia, Kuwait, the United Arab Emirates, Qatar, Bahrain, and Oman. The GCC was established in Riyadh, Saudi Arabia, in May 1981.

## CONCEPTS AND CASE SELECTION

This study highlights how the EU and, more specifically, the aims of the EGD influence the sustainability transition in the Middle East and specifically in the two selected countries, Iraq and Syria. Focusing on fossil fuel-dependent economies, the researchers ask: will the logic of consequentialism or appropriateness sway these countries towards the EGD, which implies tilting from fossil energy to renewable energy? Which logics of social action are at play in EU-Middle East relations?

This study concentrates on the attempts of the EU with the two Middle Eastern countries to focus on the EGD and consider sustainability in the region. There are several reasons for limiting the scope of this study only to Iraq and Syria. The EU's sustainability policies and foreign policy towards these two countries differ from the other Middle Eastern countries. The EU has specific partnerships and initiatives towards each of these countries for fostering peace and sustainability, which we outline in more detail in the following section, where the logic of appropriateness and consequences conflicts with the interests of Iraq and Syria as conflict-affected countries with strong ties to Europe.

## EUROPEAN GREEN DEAL AND THE MIDDLE EAST

The most relevant effect of EGD is that it shrinks oil demand in the European markets, affecting the GDP of oil-producing countries. Indeed, oil phase-out is also consistent with the main goals of the Paris Agreement's 1.5-2°C temperature limits (Gerasimchuk et al. 2018). Therefore, the EU plans the transition to renewable energy resources, while oil-producing countries need to launch plans for reducing the economic, political, and social impacts of fossil fuel phase-out. Another aspect of approaching renewable transition is an increase in oil price, while the opposite is true for oil producers as a decline in oil price adversely affects their economy. From an economic perspective, the challenges for imposing climate change measures are centered on economic disadvantages for which even European economies are not ready yet. In the Middle East, the focus is on the present challenges, not future concerns (Peeters and Deketelaere 2016). The expected impacts of the EU's EGD will be uneven across the Middle East. While the economic impacts of EGD will be more severe for Iraq and Syria and even other countries such as Saudi Arabia, Iran, and Yemen, it can be said that overall, the economic and geopolitical impacts are costly across the region. Besides, the EU partners will be differently affected depending on how they are related to the EU (Leonard et al. 2021).

### The Case of Iraq

Climate change has become a reality for Iraq. Recently, the country has suffered from drought, extreme temperatures, frequent dust storms, and water quality and scarcity, contributing to economic activities. Like other countries, Iraq needs to take serious measures at the local level that align with the EGD. From a climate perspective, Iraq needs an EU guide to diversify its economy, and economic diversification has been a call in the EU-Iraq Partnership and Cooperation Agreement.

As European Green Deal aims at a carbon-free economy, it calls for decoupling economic growth from resources. Transitioning to a circular economy will directly affect the oil-producing countries globally, specifically the Middle Eastern countries. Through the European Neighbourhood Policy, the European Union has been committed to peace, stability, security, and economic growth within and around the EU, where it targets the Middle East and North Africa (MENA) region and countries (Hussein 2022). In this context, Iraq's undiversified economy is vulnerable to the transition towards decarbonization and zero-emission. Though the level of concern and awareness concerning climate change in Iraq is not as serious as in Europe, Europe can support Iraq in various aspects, including the implementation of the National Development Plan 2018-2022 (NDP), the Iraqi Vision 2030, a White Paper for Structural Reform, the ratification of Paris Agreement on Climate Change, EU Gender Action Plan III for 2021-2025.

The EGD implications for Middle Eastern countries are multifaceted, as the decline in oil demand affects oil-dependent economies in the region. Thus, Iraq and Syria, like other Middle Eastern countries, must prepare for an oil phase-out, especially by 2050. The EU needs to consider the Middle East as a priority partner, as since the Arab uprising, the relations between the EU and some Middle Eastern countries have deteriorated. Meanwhile, the EGD pursues green diplomacy to support neighbors transitioning to green and more sustainable economies. However, this picture is not fully drawn regarding the Iraqi case regarding green transition, yet the EU has a positive role in Iraq's stability and economic recovery (Akcali et al. 2022).

Based on the existing evidence, the EU and the Middle East have not had any concrete plans for climate and energy policy, as the EU climate neutrality deadline is 2050, compared to the Iraqi and other Middle Eastern ambitions of increasing oil production, while the motive from one sense is that Europe is still a heavy fossil fuel dependent market (Rau 2022). In the context of EGD and energy security at the heart of Russia's invasion of Ukraine, the Russian actions have reminded Europe of the importance of the Middle East, especially Iraq and Syria. Therefore, European Council has realized a joint communication of "a strategic partnership with the Middle East" (Mills 2022). Meanwhile, Europe has concluded that being dependent on Russian gas is a mistake; under the logic of consequences, European countries need to diversify energy resources to avoid the impending energy crisis in Europe because of the recent tension between Russia and Ukraine (Business Standard 2022). There is an exact fit for the logic of appropriateness in the Iraqi case, in which the relationship between Iraq and Syria also affects and results in various consequences for Europe. Since Syria is a vital energy transit country for the region to Turkey and possibly Europe (Baconi 2017). For the EU, it is time to rethink the logic of the consequence of curbing Russian oil and gas. Middle Eastern partners are trapped in long-term contracts, especially with Asia, and building the infrastructure, for instance, for gas, takes time (Dourian 2022). Indeed, a clear policy complication for the EU regarding gas lies at the heart of the logic of appropriateness on the one hand and the logic of consequences, as energy disruption or cut-off will have serious geopolitical and economic reality (Bouzarovski et al. 2015).

The problem regarding climate and sustainability in Iraq is exacerbated by certain factors such as; years of wars like the 1980 Iran-Iraq war, followed by the 1991 first and second Gulf wars, the United Nations sanctions on Iraq, the 2003 US invasion, and very recently the 2014 Islamic State war. The World Bank (2017) confirmed that Iraq's environment is subjected to



serious pressures from population growth, the impact of a few wars and their aftermath, and poor land planning.

There have been few international initiatives in Iraq since 2003 on environmental sustainability and rebuilding Iraq. One is a collaboration between the UN Environment Programme (UNEP) Regional Office for West Asia and the UN Development Programme in Iraq to accelerate the 2030 Sustainable Development Agenda implementation in Iraq. The memorandum aims at supporting Iraq in the post-Covid-19 phase by focusing on environmental sustainability, climate change, environmental policy, etc. (Reliefweb 2020). At the same time, natural resources play a significant role in mitigating climate change. Iraq is rich in fossil fuels, but water is a scarce resource. Thus, the water level in the Tigris and the Euphrates rivers is expected to decrease dramatically by 2030. Another misfortune is that almost 91% of Iraq's water supply flows from Turkey, Syria, and Iran (Karasik and Depretto 2019).

There are a handful of small projects that the EU has started in EU that have contributed to climate change; the most recent example is the EU project for improving the quality of water in Basra, which has environmental and human effects in the city. This is besides the European Joint Investment Initiatives, which help the urban areas improve service delivery and get prepared to take rural migrants.

## **The Case of Syria**

A series of extreme events in recent years has influenced the Syrian economy and the environment. Back in 2011 onward, people's livelihoods deteriorated due to the Arab uprising, which resulted in conflict and instability in Syria. Since the Syrian crisis has become global, the EU has supported the Brussels conference on "Supporting the future of Syria and the region". Despite the difficulties, the EU and its Member States have decided to provide €20 billion (\$22.5 billion), in humanitarian, stabilization, and resilience assistance since 2011 - for Syrians in Syria and in support of the neighboring countries (European Union 2020). Since the crisis in Syria, European Union has contributed to supporting UN-led intra-Syrian negotiations for political transition, saving lives, and providing humanitarian aid for refugees and communities in Syria and host countries (European Union 2019). Due to the conflict in Syria, since 2011, EU relations with Syria have been scaling down. Nevertheless, the main focus of the EU through the European Neighbourhood Policy has provided humanitarian support to the affected people in Syria (European Commission 2014).

The main risks associated with climate and sustainability in Syria are of enormous significance because conflict and intra-state wars have already doubled the depletion of resources and the climate in Syria. According to this logic, Syria's sustainability situation has worsened due to the nation's ongoing war and strife for the past ten years. That is to say, prior to 2011, it was claimed that climate change was not at the forefront of the mind of people in Syria. The initial breakout of the conflict in Syria can be traced back to a lack of available resources and access to water and food (Kelley et al. 2014). Besides the political factors, water scarcity and drought have caused human suffering in Syria, fuelling the conflict. Whether climate change has driven the conflict in Syria or not, climate change has been the main driver of the conflict, as people's demands were due to severe drought and food insecurity (Swain and

Jägerskog 2016). Since the outbreak of civil war in Syria, millions of Syrians have been internally displaced, refugees in neighboring countries, or have fled to Europe (Swain and Jägerskog 2016).

Nevertheless, many scholars confirm the link between the Syrian crisis and climate change, especially with the lack of governmental capacities to manage the five years of severe drought during 2006-2010 and poor agricultural policies that have further deteriorated water security in Syria (De Châtel 2014). Based on his analyses, Daoudy (2020) has addressed structural and vulnerability factors regarding climate change and conflict in Syria. As he analyzed, the structural factors are context-specific preconditions for political, social, economic, and climate vulnerability and human insecurity. The second type is vulnerability factors, counted as development conditions of water, agriculture, employment and poverty, policies as corruption and subsidies, lastly environmental variables.

While the EU launched EGD, Syria was in the worst humanitarian crisis. The EU has continuously contributed to providing support across Syria, not only in Syria but also in the neighboring countries (European Union 2019). Regardless of the EU's commitment to international pledges for climate change and decarbonization, the energy transition results in severe economic challenges for oil and gas-producing countries, especially the Middle East and North African countries with less diversified economies (Hafner and Tagliapietra 2020).

Thus, it can be said that Syria is late in catching up with EGD and focusing on sustainability and climate change. Meanwhile, for the European Green Deal, the external fit for Syria is another case that needs to explore the future of gas diplomacy with Europe, especially in the current gas crisis in Europe due to the war in Ukraine. Syrian economy, since the 1990s, has become a net importer of oil and petroleum products accounting for 40 percent of government revenues and 25 percent of exports. It accounts for 15 percent of the GDP, which makes the Syrian economy vulnerable to commodity prices, such as the oil price shocks of 2020 and 2014, the most recent price declines (Verner and Breisinger 2013).

Meanwhile, the Green Deal has strong regional and international implications; therefore, European Union needs to use its influence, expertise, and financial resource to support its neighbors and partners to join it on a sustainable path. Yest, EGD aims to buy in all partners to contribute to zero carbon emission and green development. However, these goals in the context of Syria are so far difficult to achieve (OECD 2021).

The European Commission Factsheet indicated the EU's financial support for Syria, for instance, just in 2021 was €130 million in humanitarian aid to provide vital assistance to millions of people inside Syria, in addition to the support the commission has provided to Syrians in neighboring countries. Since the civil war outbreak in Syria in 2011, the EU has mobilized €24.9 billion to support the most vulnerable Syrians inside the country and across the region. While discussing the role of Europe, it is worth focusing on the diplomatic tools and means that European Union induces in its relations with the neighboring countries, including Mediterranean countries, the Middle East, and Africa. Right during the crisis in Iraq, European Neighborhood Policy (ENP) was launched in 2004 to support and foster stability, security, and prosperity in the EU's neighborhood. The review of the ENP in 2015 changed the cooperation framework and proposed approaches to building fruitful partnerships with the neighborhood. ENP focuses on promoting democracy, the rule of law, protecting human rights, and social cohesion. More

importantly, economic development for stabilization, security, migration, and mobility were the main priorities of ENP (European Commission 2020). In line with this, the Mediterranean and Syria as transit countries are important for the European Neighborhood Policy (ENP). That is to say, the EU, through ENP, promotes economic and political reforms in Syria and the broader Mediterranean. For European relations with other nations, bilateral collaboration is still essential. Syria was one of Europe's most important neighbors before 2011, but since the start of the civil war, there has been a breakdown in the close ties between the EU and Syria. According to European Commission, the Union has suspended all its bilateral cooperation with Syria since May 2011.

Meanwhile, the EU has adopted targeted restrictive measures, including sanctions, and further support through the European Investment Bank (EIB) was ceased (European Commission n.d.). Nevertheless, the EU continues to support Syrian refugees and those displaced. Even during critical phases of the Syrian civil war, the EU, through United Nations agencies, tried to reach people in need in Syria. The European Commission has provided €615 million in humanitarian aid since the start of the crisis (Politico 2014). As the EU has suspended and introduced restrictions against Syria, the EU developed close ties with Syrian opposition through the Friends of the Syrian People Group, supported by the French initiative in 2012 (CRU report 2021).

Furthermore, bilateral cooperation regarding the Green Deal and climate change ensures the mutual commitment of involved countries. In response to the Syrian crisis, the European Union joined the Global Coalition against Da'esh' in 2014 as a non-military party (CRU report 2021). Worth mentioning here is that the EU leadership is oriented on humanitarian support for Iraq and Syria while in crisis. Thus, European Neighborhood Instrument (ENI) 2014 established the "Madad" Regional Trust Fund to implement the UN Regional Refugee and Resilience Plan priorities in response to the Syrian crisis. In addition, in 2015 EU allocated €300 million under the ENI to the Madad Fund and redirected €200 million to form the Instrument for Pre-Accession (Demmelhuber 2018).

## DISCUSSION

Concerning the logic of consequences, the EU has not considered the implications of the Middle East crises in nations like Syria and Iraq and their impact on climate change and sustainability. That is to say, the situation in Iraq seems more fertile for the Green Deal and energy transition. At the same time, the EGD economic implications for Iraq and Syria are severe due to a lack of adequate economic diversification.

Regardless of the EU's financial support, the current circumstances of Iraq and Syria are not fertile for focusing on the elements of the EGD. Therefore, the right conditions must be in place to re-address the necessity of climate change and the EGD implications on Iraq and Syria. In light of energy security and climate change, Europe, before Russia invaded Ukraine, aimed to make Europe independent from Russian energy before 2030 (European Commission 2022). In response to the Russian offense against Ukraine, the European Commission presented REPowerEU to enhance EU energy independence and tackle the climate crisis. The logic of consequences in the energy dependency scenario makes the EU green transition necessary;

however, the logic of appropriateness indicates the importance of Ukraine as a potential energy hub and transit country to support the EGD's short-term goals to achieve the green transition goals (Lanoszka et al. 2022).

The war in Ukraine might bring a necessary shift in EU-Middle East relations and the EU energy policy. Though short-term solutions are impossible, the EU has the Middle East as an alternative gas provider by tankers which is difficult but can prevent a supply crisis in winter 2022. While pipeline projects from the Middle East and other regions are only viable in the long term (Cwalina 2022).

Energy security positions European Union into a critical phase during a crisis such as the Ukraine war. At the same time, European Green Deal endangers energy demand from Russia to fully decarbonize the economy by 2050. The main target for EGD is a 55% reduction in carbon emissions by 2030. While diversifying the energy supply reduces EU energy dependency and Russian monopoly on energy security and transport routes. It appears to be impossible to quickly and completely decarbonize the EU economy at this point in the Ukraine war. At the same time, Middle Eastern energy producers are more reliable and secure alternative energy suppliers than Russia.

In this respect, Iraq is an appropriate option for the EU energy supply, as natural gas will bridge the transition phase from heavy oil dependence to renewable energy sources. Thus, Iraq, Iran, and Syrian alliance for building natural gas corridor to Europe can be an option, as Iraq has strategic gas resources, and Syria can be the transit route for assuring the security of supply to Europe. Some scholars refer to natural gas as a bridge fuel between the fossil fuel economy and a low-carbon future. Based on BP's statistical data, the Middle East is home to some 43 percent of known conventional gas reserves (Kuzemko et al. 2016). At the same time, Iraq is ranked No. 13 for world gas reserves (World Energy Outlook 2012).

Furthermore, BP statistical data shows that Iraq's current proven gas reserves are estimated at 126.7 Tcf, representing 1.7 percent of total global gas reserves. The EU attempts to diversify the energy supply in light of the current expectation. It keeps the EU's dependency on Turkey and gas producers, including Iraqi Kurdistan, Iran, and Syria. In this scenario, Turkish bargaining power is vital as a transit country for European gas supplies (Webb 2009). Iraq has a significant position globally as it has total gas reserves as high as 280 Tscf, placing Iraq among the world's top five holders of conventional gas reserves (Integrated National Energy Strategy Final Report 2012).

## CONCLUSION

Concerning the logic of consequences, the EU has not considered the implications of the Middle East crises in nations like Syria and Iraq and their impact on climate change and sustainability. That is to say, the situation in Iraq seems more fertile for the Green Deal and energy transition. At the same time, the EGD economic implications for Iraq and Syria are severe due to a lack of adequate economic diversification.

Over the past months, the war in Ukraine has repeatedly indicated the importance of energy security for the European Union. Thus to achieve the EGD ambitions EU needs to prioritize supply diversification because the transition is a long-term process.

There are essential preconditions for Iraq and Syria to consider while tackling the European Green Deal effects, particularly the economic aspects and the future of energy. Based on the logic of appropriateness to kick-start the change process, the EGD can induce and re-address the energy challenges while considering the position of Syria and Iraq because the infrastructure operation and building it in the energy sector has political and economic aspects. Thus, the EGD is affected, and it affects Syria and Iraq (Bouzarvoski et al. 2015).

Based on researchers' observations, the Green Deal is an opportunity to transform the Iraqi and Syrian economies towards a better future, at least partially free from fossil fuel dominance and a window to economic diversification. While through REPowerEU investments in renewable energy will lead to a long-term influence on green transition globally (Medinilla 2022). While the EU approaches EGD, energy security is a serious challenge at the forefront of Europe. Thus supply diversification is the only governance mechanism that can guarantee energy security and assures energy supply by reducing dependency on Russia (Heshmati and Abolhosseini 2017).

To conclude, the role of the EU is fundamental for promoting sustainability and helping Iraq and Syria to mitigate the effects of EGD in advance. As the EU has a historical record of supporting both countries, it is expected that the EU will provide further support for Iraq and Syria associated with EGD implementation in the near future. Syria and Iraq are facing various challenges, and the pressing needs push governments to pay less attention to climate change and green transition. Meanwhile, the region could also become a solar hub that can provide renewable energy to the region and Europe. In the wake of global awareness regarding climate change, governments and stakeholders should stress the transition to decarbonization. Meanwhile, the direct implications of the decarbonization transition for the entities in energy production, carbon-intense actions, and infrastructure development are to be taken seriously (Shree 2019). Thus, in the future, the EU should contribute to green transition and economic diversification in the Middle East to achieve EGD objectives and secure more renewable energy resources.

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# THE EXPLOSIVE UKRAINIAN MIGRATION DUE TO THE RUSSIAN ARMED CONFLICT IN 2022: THE CASE OF BULGARIA

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**Abstract:** *In this work, we have studied the evolution of the Ukrainian refugee crisis in Europe during the first several months after the beginning of the armed conflict on 24 February 2022. We have also talked about the influx of Ukrainians into Bulgaria, where there has reportedly been the biggest wave of refugees in recorded history. By using official statistics and structured interviews with Ukrainian refugees in Bulgaria, we have analyzed the specific evolution of the immigrants, their profile, and the governmental policies for better integration of them into the labor market and within the society. Our key arguments are mainly related to the fact that such policies must be successful for most Ukrainian immigrants and refugees due to the similarities between Ukraine and Bulgaria regarding traditions, education, and historical ties. Our conclusion confirms these arguments but also mentions several problems related to the low wages, the limited childcare, and the heavy bureaucracy.*

**Keywords:** *Russia-Ukraine War; Ukrainian Refugees; Protection Scheme; Europe; Bulgaria*

## INTRODUCTION

The Russian-Ukrainian armed conflict started in February 2014 following the Ukrainian Revolution of Dignity. Initially, it was related to the status of Crimea and Donbas. This included the armed conflict between Ukraine and the Donbas separatists, naval incidents, and cyber warfare.

The Euromaidan protests resulted in the removal of pro-Russian President Viktor Yanukovich in February 2014. In April 2014, demonstrations by pro-Russian groups in the Donbas escalated into an undeclared war between the Armed Forces of Ukraine and the Russian separatists, intermingled with Russian troops at the self-proclaimed Donetsk and Luhansk republics. After the controversial referendum in Crimea, Russia annexed it to the territory of the Russian Federation.

In 2021 and early 2022, major Russian military exercises occurred around Ukraine's borders. On one side, NATO accused Russia of planning an invasion. On the other side, Russian President Vladimir Putin criticized the enlargement of NATO as a threat to his country, especially the aspiration of Ukraine to join the organization. Moreover, he expressed his views questioned Ukraine's right to exist by stating that Vladimir Lenin established Ukraine. On 21 February 2022, Russia officially recognized the two self-proclaimed separatist states in the Donbas (Donetsk and Lugansk) and sent troops into their territories. On 24 February, the Russian Federation started a

direct armed conflict with the whole of Ukraine. This provoked a large-scale migration of Ukrainians abroad and inside the country and a strong rejection of the international community against Russia for violating a sovereign country. The latter led to the implementation of the strongest economic sanctions ever seen (GCT 2022; AHA 2022; EC 2022). Moreover, the European security architecture built over many decades has broken (NATO 2022).

The present paper mainly focuses on the beginning of the conflict and how it has affected the migration flows of Ukrainian refugees across Europe. A special emphasis is made on the case of Bulgaria, a country that experienced drastic migration flows of Ukrainians during the first several months after the beginning of the armed conflict.

### **THE UKRAINE MIGRATION IN EUROPE DUE TO THE UKRAINIAN-RUSSIAN ARMED CONFLICT AFTER 24 FEBRUARY 2022**

The military conflict started on 24 February 2022 by the Russian Federation in Ukraine reflected a major humanitarian crisis and migratory flows in contemporary Ukraine and Europe of the XXI century. On 1 March 2022, the International Organization of Migration (IOM) started an appeal for Inclusive “protection measures” to mobilize teams in Ukraine and neighboring countries to respond to the growing humanitarian needs of Ukrainians forced to flee the country, those internally displaced and stranded third country nationals. Only in the first five days after the beginning of the military operation, more than 600.000 people fled Ukraine (IOM Response 2022). In March 2022, the EU adopted a temporary protection scheme for persons fleeing the war in Ukraine, which consisted in the decision that all citizens of Ukraine who have left the country since February 24 automatically receive legal status in the EU and will be allowed to live in the EU, have the right to work, access to social security, medicine, and education. This temporary mechanism is designed for one year, until March 2023. However, the EU Council can either extend its operation (twice for six months) or reduce it if the situation in Ukraine stabilizes (EU Protection 2022). Meantime IOM, with initial funding from the UN Central Emergency Fund, the European Union, Canada, Germany, and the Bureau for Humanitarian Assistance of the United States Agency for International Development, launched a cash-based program that will cover multiple regions in Ukraine to support vulnerable displaced persons and host communities (IOM Assistance). The large humanitarian response inside Ukraine at the border points and countries of first arrival and throughout final destinations of refugees involved not only the international community but also the civil society, donors, and international organizations to contribute with resources to help the crisis. The exchange of information regarding the Ukrainian refugees contributed to coordinating and planning this large and complex humanitarian response (IMPACT Initiative 2022). At the same time, the IOM scaled up the regional displacement tracking in response to the armed conflict in Ukraine by collecting and analyzing data on the mobility and vulnerabilities of displaced persons to ensure that assistance provided to affected populations corresponds to their needs (IOM DT 2022).

In parallel, the diaspora’s response to the war in Ukraine was also very strong and effective. By using financial resources and direct donations, members of Ukrainian communities abroad have been engaged in multiple non-financial forms to contribute their social, political, and intellectual knowledge (ICMPD Diaspora 2022).



From the beginning of the conflict to 15 June 2022 more than 7.7 million border crossings from Ukraine have been registered, and more than 5 million Ukrainian refugees arrived in Europe. The major host countries were Poland (1.170.000) and Germany (780.000), as well as the rest of the neighboring countries such as Slovakia (78.500), Hungary (24.500), Romania (98.000), and Moldova (85.500) without taking into account the refugees to the Russian Federation and Belarus (UNHCR 2022). The countries of Western Europe, such as France, Italy, the UK, Spain, and the Netherlands, among others, have also been important host countries for helping the refugees, together with countries such as Bulgaria (80.000) and Turkey (70.000).

The situation on 19 July 2022 was similar when the number of refugees from Ukraine recorded across Europe was 5.988.696. "temporary protection" or similar national protection schemes in Europe registered 3,709,329. The number of border crossings from Ukraine from 24 February 2022 until 19 July 2022 has ascended to 9.567.033, and the border crossings to Ukraine since 28 February 2022 have been registered to be 3.793.403 (UNHCR 2022).

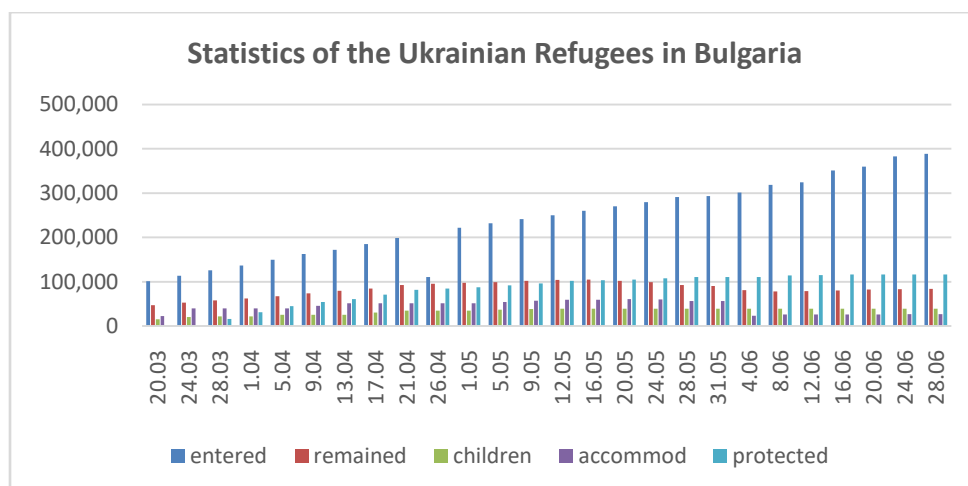
Poland continues to be the most demanded country for Ukrainian refugees on 19 July due to its geographic and cultural closeness with 1.234.718 people registered for temporary protection, followed by the rest of the neighboring Ukraine countries such as Slovakia - 85.771, Romania - 45.530 and Hungary - 26.932 (UNHCR 2022).

This situation is not without precedents. In 2015, Syrian and other asylum seekers crossed through Europe. During the war in Bosnia and Herzegovina in 1992, over one million people fled their homes. When the war ended in 1995, almost half of the population had been displaced, many of them internally. One must remember the wars and armed conflicts during the XX century when numerous refugee crises occurred in Europe. During World War II, around 10 million ethnic Germans were expelled from East and Central Europe. Over half a million Ukrainians and one million Poles were displaced when the border between Poland and the Soviet Union was redefined. The invasion of Belgium (1914) and Serbia (1915) led to a migration of a similar scale as what is occurring in Ukraine nowadays (NYT 2022).

## **THE UKRAINIAN MIGRATION IN BULGARIA AFTER 24 FEBRUARY 2022**

The Ukrainian refugee phenomenon in Bulgaria is very similar to that in the neighboring countries of Ukraine. Over 195,000 Ukrainian citizens had entered Bulgaria through the border with Bulgaria as of 18 April, and more than 91.000 of them, including about 35,000 children, had chosen to stay. Over 50.000 Ukrainian citizens were accommodated in hotels or state and local departmental buildings under the "Programme for the Use of Humanitarian Aid for Displaced Persons from Ukraine", which entered into force in mid-March. This indicates that most of these refugees have been hosted by Bulgarian citizens - more than a third. This initial national aid program was in force until the end of May, providing places for accommodation with 40 BGN (approximately €20) per day per refugee for shelter and food. Since the beginning of June, the Ukrainian refugees have been accommodated in different bases for recreation and relaxation.

Before this happened, most people were accommodated in hotels on the Black Sea coast due to the large number of accommodation facilities and the substantial Russian and Ukrainian-speaking communities in Varna and Burgas, which provided sufficient support (DS 2022).



**Figure 1: Distribution of the Ukrainian Refugees in Bulgaria March-June 2022: Entered, Remained, Children, Accommodated and Protected (Source: BfU 2022)**

In Figure 1 one can see the number of Ukrainian refugees who have entered in Bulgaria from March 20th until the end of June 2022 as well as the remained refugees, the children, the accommodated persons, and the protected ones entered during the same period (BfU 2022). At the end of June 2022, there were nearly 120.000 people registered for temporary protection, with 84.000 women and 36.000 men. The age structure is also specific - 65.000 were people of working age (18-64), almost 40.000 were children (up to 18), and nearly 9.000 were older people (over 65) (BfU 2022).

The uncertainty caused Ukrainian immigrants to actively leave the country prior to the resettlement at the end of May 2022. The number of those leaving the country remained higher than those entering. However, since June, the increase of those who decide to remain in Bulgaria has increased continuously (see Figure 1).

After 31 May 2022, as discussed above, the number of accommodated Ukrainian refugees has dropped drastically by half as many refugees have found their accommodation or have left the country (Figure 1). Similar to the remaining Bulgaria Ukrainian refugees, the number of accommodated ones has been increasing continuously since June (European Times 2022; Reuters 2022).

Finally, the number of Ukrainian refugees who have entered the country and those who applied for protection has increased continuously since March, when the refugees started to enter massively. The number of Ukrainian children has remained constant (around 40.000) since mid-May 2022. Comparing the number of Ukrainian refugees in Bulgaria to those of the Middle East refugees, the former is ten times larger than the latter. The applications for international protection filed by refugees from the Middle East is 8.327, with 1.423 of them being by unaccompanied minors (BNR 2022).

By 15 July 2022, around 7.400 persons who received temporary protection in Bulgaria had started to work, representing 11.4% of all working-age persons who have been granted temporary protection. About 64% started working in the hospitality sector, while the other sectors are represented by trade (8%) and manufacturing (7%). Other 179 people (2.4%) started

work in the information technology sector, and 41 persons (0.6%) started in finance. The regional breakdown shows that nearly  $\frac{3}{4}$  of all working persons who received temporary protection were employed in the sea region and mostly in the municipalities of Nessebar (2.437), Varna (1.376), Balchik (419), and Primorsko (352). In addition, the leading municipalities in employing Ukrainians were also Sofia (868) and Plovdiv (219). Although there is a lack of personnel in many other regions, they have not been particularly successful in attracting Ukrainian citizens. The districts in which the total number of employed persons who received temporary protection is less than 20 were Vidin, Vratsa, Kardzhali, Kyustendil, Lovech, Montana, Pernik, Pleven, Silistra, Targovishte, Shumen, and Yambol (Dnes 2022).

Despite the former government's social policy, several difficulties obstructed the quick integration of the Ukrainian refugees into the labor market. The main difficulty is related to the economic part since most jobs offer to pay the minimum wage, which is insufficient to cover the monthly needs of refugees, mostly women with one or more children. Additionally, childcare is complicated for the mothers working, considering the shortage of municipal nurseries and kindergartens throughout the country (DS 2022). This has been reflected in a massive leaving from the country (European Times 2022).

In order to see the real adaptation of the Ukrainian refugees in Bulgaria, we have conducted several interviews with them in the capital Sofia and the northern part of the Black Sea resorts. All of them have started working in the tourist, service and entertainment sectors and have succeeded in adapting very quickly and learning the Bulgarian language at a relatively good level. Moreover, those who worked in the tourism sector had a good background in other languages, such as English and Russian. The owners of the companies who hired Ukrainian workers were also very satisfied with their professionalism and previous experience in similar fields.

Regarding the integration of Ukrainian citizens in a larger European context, one can cite the general problem of skills assessment and recognition of qualifications of refugees and immigrants in Europe. Sometimes, due to problems with recognition of their qualifications, skills, and work experience, many refugees and migrants are underemployed or are staying unemployed (EC Integration 2022).

The IOM recently launched a freelancing platform helping displaced Ukrainians find remote, online work, facilitating their entry into the job market. This allows for identifying unemployed job seekers in Ukraine and its neighbors who possess the necessary abilities for the employment market and assists those interested in starting their own businesses as online freelancers (IOM freelance 2022).

## CONCLUSION

In this article, we have analyzed the explosive character of Ukrainian immigrants and refugees, a phenomenon that occurred after the Russian military operation in Ukraine on 24 February 2022. We have discussed the destinations of the Ukrainian migration flows across Europe during the first fourth months after the armed conflict's beginning and the previous historical events which ended to this magnitude.

We proceeded later to investigate the Ukrainian migration in Bulgaria. For this case, we have analyzed the dynamics of Ukrainian immigration in response to the governmental policies after the beginning of the armed conflict. The effect of Ukrainian immigration on the Bulgarian labor market has also been discussed. There are still issues with the low wages, the limited childcare, and the bureaucratic barriers that prevent foreigners from entering the job market, even though the adaptation of immigrants and refugees from Ukraine can be a quick process due to the good background and preparation of the majority of them, the similarities in languages and traditions, as well as the efforts of the government and business for better integration. Nevertheless, by 15 July 2022, around 7.400 persons who received temporary protection started to work.

Finally, some attempts to improve the recognition process of the immigrant's qualifications, skills, and work experience have been mentioned in a general European context.

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# OPEN BALKAN INITIATIVE: A CONTESTED ISSUE IN THE EU MEMBERSHIP PERSPECTIVE

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**Abstract:** *The Open Balkan is the latest regional initiative in the Western Balkans (WB), firstly named as Mini-Schengen and then changed to Open Balkan Initiative (OBI), which aims to increase the regional economic cooperation among the WBs by going beyond the mere objective of creating a Common Regional Market (CRM). This paper using an analytical approach, taking into account data and information, has identified and highlighted the openly declared objectives of the OBI while comparing it with the previous Berlin Process. Also, the paper has shown that the disputes among the WB countries most inherited from the unresolved issues of the past are still present and hinder the progress towards a common future and EU membership perspective. The reactions to the OBI proved that even the creation of mere economic cooperation is hardly achieved in the case of other existing unresolved issues of the past and continues to remain open. This paper has highlighted the existence of mistrust among the WBs, the importance of increasing regional cooperation, and the role that the EU should inevitably play. The paper has concluded that to achieve the targets defined in the OBI, the WBs should enhance regional cooperation and overcome the challenges they have been facing.*

**Keywords:** *Mini-Schengen; Open Balkan; Berlin Process; Western Balkans; Regional Cooperation; Common Regional Market*

## INTRODUCTION

The Open Balkan Initiative (OBI) represents the latest initiative among Western Balkan (WB)<sup>1</sup> countries to increase their overall cooperation by removing the barriers hindering economic development in the region.

Although this initiative, initially known as “Mini-Schengen”,<sup>2</sup> was not jointly taken by all the Western Balkans (WB) but only by Serbia, Albania, and North Macedonia in 2019, aiming to include all the Western Balkan countries (WBC). Therefore other WB countries Montenegro, Bosnia and Herzegovina, and Kosovo, have also been invited to join. In the beginning, this initiative aimed to go further than merely providing a free movement of citizens; as such, it aimed to make a total removal of all existing trade barriers and to make possible the creation of a Common Regional Market (CRM) among the WB countries similar to the EU Internal Market. Hence, the initiative’s name was changed to “Open Balkan”.<sup>3</sup>

<sup>1</sup>The term Western Balkans is used for the following group of countries: Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia.

<sup>2</sup>The name “Mini-Schengen” symbolically refers to the Schengen Area.

<sup>3</sup>The “Mini-Schengen” initiative leaders met in a Business Forum in Skopje in July 29, 2021, and changed its name to “Open Balkan Initiative”.

Regarding the EU integration, each of the WB countries - including the existing and potential EU candidate countries of the Open Balkan has already signed a Stabilization and Association Agreement (SAA) with the EU as an integration agreement. Therefore all the WB countries are in the EU accession process. The EU membership has been the final desired destination and the openly declared longstanding target of all the WBs.

In this regard, it is to be said that the halt of the EU integration process with the Western Balkans and the general prospect of slow-motion developments ahead made the political leaders and the public opinion of the WBs to be disappointed with the EU. The "credibility of the enlargement process - a crucial instrument of EU foreign policy - has lost momentum" (Hajdini 2020, 1). It is exactly for the same reason that in 2014 the countries of the WB region launched the Berlin Process as an intergovernmental non-EU initiative led by Germany which aimed to keep alive the EU integration perspective of the region.

Therefore, and as it is already made clear, because of a distant EU membership, the initiators of the OBI did launch this initiative in order to establish the same model of "EU freedoms" for their citizens and neither aiming to substitute the EU integration process of the WB nor to underestimate the importance of the Berlin Process and the other regional initiatives already in place. In this regard, it is worth mentioning that in the Skopje Business Forum (held in Skopje on 29 July 2021), the initiators of the "Mini-Schengen" - the political leaders of Albania, Serbia, and North Macedonia on the occasion of changing the initiative's name to "Open Balkan" did also use the event to launch the campaign "Open Balkan" for easier business in the region and simultaneously signed the three first agreements and memorandums serving to this purpose.<sup>4</sup>

## CONTEXT AND BACKGROUND: COMING TO THE OPEN BALKAN

The halt in the EU integration process, namely the stopping of EU enlargement with the WB countries, made the EU policy-makers, especially Germany, "think about" keeping the WB countries closer to the EU and, therefore, the "spirit" of integration alive. Thus, with the support of some other EU Member States, Germany initiated and led the Berlin Process launch. "During the launch of the Berlin Process (Berlin Declaration 2014), two bilateral disputes were emphasized as central: Kosovo-Serbia and Greece-Macedonia. The latter managed to be solved due to the finalization of the historic Prespa Agreement in June 2018. However, the Kosovo-Serbia dispute continues to be a major challenge for the two countries and beyond" (Xhambazi 2019, 5)

However, regarding EU integration, the Berlin Process was not considered promising enough by the WB countries, nor was it an EU initiative. The WB countries always have counted on the EU accession and therefore have been found in a longstanding process of fulfilling

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<sup>4</sup>"The Memorandum of Understanding for Free Access to the Labour Market (aiming to facilitate the obtaining and use of work permits for citizens of Serbia, North Macedonia and Albania), Agreement on Cooperation in Protection against Disasters in the Western Balkans (aiming to help the three countries in case of disasters by increasing cooperation, providing mutual notification of threats, occurrence and consequences of disasters, providing mutual assistance in rescuing, education and trainings, etc.), The Memorandum of Understanding on Cooperation on Facilitation of Imports, Exports and Movements of Goods in the Western Balkans (with reference to simplification of formalities concerning import, export and movement of goods).

criteria. Even “though the Western Balkans in principle are not yet ready to become Member States, the need to keep them ‘anchored’ to the EU goes beyond particular political parties or Member States’ interests and is firmly linked to the overall security and stability of the European continent” (Hajdini 2020, 2). On the other hand, “there is also a powerful argument that the roots are mainly founded on the EU’s lack of appetite to play a more proactive role in the Balkans” (Kamberi 2021, 65). Consequently, the WBs might have been expecting the EU to play a more crucial role in the region in terms of overpassing the challenges and keeping the course of EU integration on track by unlocking the EU enlargement process. The reasons behind this

are mainly related to Albania and North Macedonia; they had been waiting to begin the process of accession negotiations with the EU for years but were left on hold despite strong efforts both at the domestic level and regional cooperation. Also, the relations between Kosovo and Serbia fell almost into a ‘frozen conflict’, with no progress in EU-facilitated dialogue; Serbia started the campaign of withdrawing recognition of Kosovo, also blocking Kosovo from joining Interpol, and as a counter-response, Kosovo imposed a 100% tariff on Serbian goods (Kamberi 2021, 64-65).

The Open Balkan Initiative was launched as “Mini-Schengen”, a model based on the free movement of goods, capital, services, and people. The “initiative is conceived as an economic zone of the Western Balkan countries that would strengthen mutual economic cooperation and trade, facilitate border crossings for citizens of Member States, but also contribute to faster integration of these countries into the EU” (Dora and Botić 2021, 15). The signature of a “Mini-Schengen” declaration (in Novi Sad, 10 October 2019) by the leaders of the three Western Balkan countries (mentioned above) “on regional economic cooperation, including free movement of goods and people, while they await progress on EU enlargement” (Zivanovic 2019).

## THE FOCUS OF THE OPEN BALKAN

The Open Balkan as a regional cooperation initiative is focused on the creation of a single market similar to that of the EU when the free movement of citizens, goods, capital, and services among the EU Member States will be provided, aiming

to strengthen regional economic cooperation and to extend the freedom of movement of people and goods. At the same time, the initiative has to provide certain benefits to the citizens and businesses through increased opportunities in the field of trade, joint investments, the development of tourism, and the appearance of third markets, and it also has to encourage the integration of the Open Balkan countries into the European Union. Moreover, the Open Balkans will promote regional market development to attract investments (Miteva-Kacarski, Panova, Gjorgieva-Trajkovska 2022, 40-41).

Taking into account that the EU single market is gradually created through a set of measures taken at the level of EU institutions and of the EU Member States to remove any barriers to trade and to provide into the EU internal/single market the free movement of workers, goods, services, and capital - otherwise known as the basic freedoms, the same logic would be used to create the Open Balkan where the parties would jointly take a set of successive measures. The "focus of the 'Open Balkan' and accompanying investment efforts is to increase the efficiency of the SME sector through technological innovation, reduce the cost of movement of goods and services, and ensure the mobility of factors of production, especially labor, and knowledge" (Avlijs 2022, 56). The Open Balkan Initiative will be gradually accomplished by signing agreements and measures taken by the respective countries which are parties to the initiative, beginning from:

- responding together to natural and other disasters;
- allowing citizens to work in one another's countries; and
- helping goods move without delays (Skopje Business Forum 2021).

The aims of the OBI's countries can be summarized as removing the existing barriers among the WB countries, remaining committed to the EU integration process and Berlin Process, and remaining open for the other countries from the WB to join the OBI. The OBI will get committed to the implementation of the four freedoms and the Common Regional Market (CRM) as agreed on at the Berlin Summit:

We are European, and our future is in Europe. We remain committed to the Berlin Process and our European perspective. Our governments have committed themselves to implement the four freedoms of the Common Regional Market, most recently at the Berlin Summit on July 5th. Open Balkan builds on the same vision as the Common Regional Market, and we invite other parties in the region to join us in accelerating, implementing, and meeting our regional commitments (Skopje Business Forum 2021).

Many agreements in this regard were signed at the OBI summits. As a result, the following agreements were signed as part of the OBI at the Tirana Summit (21 December 2021):

- The agreement ensures free access to the labor market in the three signatory countries within the framework of Open Balkan;
- The agreement for the electronic identification of citizens;
- The agreement on cooperation in the field of veterinary, food and feed safety, and phytosanitary in the Western Balkan;
- The agreement on mutual recognition of authorized economic operator - security and safety (AEOS) authorizations between Albania and Serbia and North Macedonia and Albania (DW 2021).

At the Ohrid Summit (7-8 June 2022), the OBI concluded with the signing of the four following agreements and memorandums:

- The agreement on tackling tax evasion;

- Memorandum on recognition of university diplomas;
- Memorandum on cultural cooperation; and
- Memorandum on cooperation in the tourism sector (Euronews 2022).

At the Belgrade Summit (1-2 September 2022), the OBI concluded with the signing of the following important agreements and memorandums of understanding (MoU):

- Agreement on food security mechanisms in the Western Balkans;
- Memorandum of understanding in cinematography and audiovisual activities in the Western Balkans;
- Agreement on energy and mining cooperation; and
- The operational plan on civil protection between the Republic of Serbia, the Republic of North Macedonia, and the Republic of Albania (Gov. of Albania 2022).

Nevertheless, the OBI is not yet completed. In addition to implementing the agreements and MoUs already achieved in this endeavor, there are other developments, such as meetings, summits, and joint commitments, which may be taking place upon the will of the parties.

### THE CONTROVERSIES ABOUT THE OPEN BALKAN INITIATIVE

The different initiatives of cooperation that over the years have been launched in the Western Balkans, regardless of whether at the initiative of the EU, any of the EU Member States, or the WB countries by itself, have always been welcomed by the respective countries. However, as already mentioned, this is not the case with the OBI, even though it is a regional development initiative supporting regional cooperation and which is openly declared in support of the EU perspective and integration and has also enjoyed the EU support by itself.

Unlike “other previous regional initiatives, which included all six countries from the very beginning, the ‘Mini-Schengen’ did not have the same consensus. It failed to build its case and attract political support as an initiative on its own” (Balkans Policy Research Group 2021, 26). The three WB countries, Kosovo, Montenegro, Bosnia and Herzegovina, appeared to be very doubtful about the idea of the OBI. When the project was jointly launched by their neighbors (Albania, Serbia, and North Macedonia) and they were invited to participate, they were hesitant to do so immediately. At the same time, the expectations about the OBI were to go beyond the Common Regional Market (CRM). While

the CRM aimed to significantly reduce the border waiting times for goods and citizens traveling with only IDs, the Open Balkan Initiative would completely abolish the border controls, reducing waiting time to zero for citizens, goods, and commercial inter-state activities and service providers. Although the OBI shares the same goals as the CRM, it provides a more in-depth integration and increases economic and social connections (Ristić 2021).

Nevertheless, Kosovo refused to join the OBI for the above reasons, mostly “due to its non-recognition by Serbia and Bosnia and Herzegovina and the concerns that the Serbia market



would dominate its economy” (Balkans Policy Research Group 2021, 25). It is worth mentioning that with the signature of the economic normalization agreements<sup>5</sup>, among other commitments, Kosovo also agreed to join the Mini-Schengen Initiative but has not yet joined it. Still, the tense political relations with Serbia and continuing disputes over a set of issues have not yet created the conditions for such a step to be taken by Kosovo, while the other opened and unresolved issues have overloaded the relations between Serbia and Kosovo.<sup>6</sup> On the other hand, Bosnia and Herzegovina and Montenegro have sent mixed signals, mostly comparing the OBI to the CRM. Both governments have said in their official statements that they do not see any added value in the Open Balkan Initiative, as all aspects of economic integration are already covered by the CRM, rendering the Open Balkan redundant (Ristić 2021).

### THE INTERNATIONAL REACTIONS TO THE OPEN BALKAN

The Open Balkan Initiative aims to increase regional cooperation among the WB countries by vitalizing the EU principles of four basic freedoms to go beyond the mere creation of a Common Regional Market (RCM). On the other hand, the parties to the OBI remain committed to the EU perspective and the Berlin Process. The initiative was widely supported by the main actors committed to the region, namely the EU and the US, as in the following statements:

- The EU supports regional cooperation and invites other countries, Bosnia-Herzegovina, Montenegro, and Kosovo, to join the Open Balkan Initiative; their economic benefit would be great (The speech of the EU Commissioner 2021).
- The Open Balkan Initiative could change the reality of the Western Balkans and speed up the path to the EU, adding that it is important because the countries of the region came up with the idea on their own (The speech of the EU Commissioner 2022).
- Washington supports OBI but wants it to remain an important economic initiative, not a political project, and that it should remain focused on creating opportunities for the people of the region, adding that the initiative needs to remain open for all six countries of the region (The speech of US envoy 2022).
- I have supported the Open Balkans Initiative since the beginning, as regional cooperation is the anchor of peace, stability, and prosperity for the people in the region and beyond. This is much needed, especially in times of crisis (The statement of EU Commissioner 2022).

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<sup>5</sup> Signed by Kosovo and Serbia at the White House Summit in Washington D.C. USA on 4 September 2022.

<sup>6</sup>Currently the most concerning issues are: the EU pressure on Kosovo to establish the Association of the Serbian majority Municipalities and to implement the Decision of the Kosovo Constitutional Court on Decan Monastery Case (Judgment in Case No. KI132/15) as well as the resistance the Kosovo Government is facing by the Kosovo Serbs resident in Kosovo northern municipalities supported by Government of Serbia against the Kosovo's efforts to exercise the state authority in the northern part of country by implementing the Kosovo GoV. Decision to replace the Serbian old vehicle license plates with Kosovo's ones. There are more issues which are permanently raised by Kosovo authorities as of immediate importance to be discussed with Serbia such as: clarifying the issue of persons forcibly disappeared in the war, reparations of the war, the stopping of the aggressive campaign against the state of Kosovo; the stopping of the campaign against the Kosovo's membership efforts in international organizations, and stopping of the campaign for the removal of the recognitions of Kosovo's independence.

Nevertheless, when the OBI was launched, three countries considered this initiative distrustful and divisive (Kosovo, Bosnia and Herzegovina, and Montenegro - former members of the ex-Yugoslavia), which were reluctant to join it immediately. Consequently, the debates in political and analytical circles about the benefits of joining this initiative became the most political issue on the WBs; at the same time, this initiative was perhaps the most contested ever in the region. The WBC got in a *pro et contra* campaign, including politics, media, and public opinion debates raised to high levels arguing the advantages and disadvantages of becoming part of the OBI. Apart from Albania and Serbia:

[OBI] was reluctantly accepted by North Macedonia, while in other countries, the acceptance of the initiative was more complicated, especially in the case of Kosovo, which at that time started an economic war with Serbia over taxes on imports from this country. In addition, Kosovo opposes any closer ties with Serbia before any final agreement centered on mutual recognition, especially due to the fear that this initiative potentially represents the establishment of a new creation on the territory of the former Yugoslavia under the domination of Serbia. As a country that has come significantly closer to the EU on its candidate path, Montenegro fears that this initiative could be an alternative to membership in the Union and slow down the achievement of full membership in that organization (Dora and Botić 2021, 15).

It is evident that since the OBI was increasing its support among the western allies of the WBs, the other Western Balkan countries were also advised and encouraged to join the OBI. In this regard, it is to be mentioned that in the OBI summits, except Kosovo, which continuously refused the invitation to become part of the initiative<sup>7</sup>, the other WB countries did not initially join or support the initiative but gradually modified their attitude towards the OBI. As such, in the subsequent OBI summits held in Ohrid and Belgrade, Montenegro and Bosnia and Herzegovina joined the OBI in the capacity of observers.

## THE OPEN BALKAN VS. THE BERLIN PROCESS

Regional cooperation is one of the pillars of both the Berlin Process (2014) and the Open Balkan (2019), so it is clear that the two initiatives are converging. In addition, since the Open Balkan Initiative encourages regional cooperation that advances its values, it is also clear that the Open Balkan should be considered a part of the Berlin Process. While "it remains a local initiative, Open Balkan comes under the umbrella of the Berlin Process. This implies that the initiative is not a replacement for enlargement, but it might serve only as an intermediate step that provides politicians and citizens with tangible goals and benefits while instilling local responsibility" (Semenov 2022, 25).

When it comes to concerns of coming together to discuss and decide on common interests and determining factors for their shared future, the OBI itself demonstrated that there

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<sup>7</sup>On Open Balkan, Kosovo's official position has always been that it will support the Berlin Process going forward since it believes that it is the only route leading the region to the EU at the moment.

is still a lack of trust among the WB countries. For this reason, the WB countries may keep objecting to joint projects that appear to “threaten” or “impose” the dominance of one country over the others. Due to the violent dissolution of the former Yugoslavia in the Western Balkans’ past, it is obvious that the WB countries only consider such “movements” when they are part of larger initiatives (such as the Berlin Process) in which the EU or major EU Member States are directly involved and which are expressly related to the EU integration. This is especially true regarding several components of regional integration, such as CRM.

As a regional initiative, it is often considered that the OBI does not enjoy a visible and strong EU integration capacity. However, beyond the political disagreements, there is no doubt that the OBI is visionary, and its goals benefit the region. On the other hand, as the ultimate goal of the region is EU integration, the Open Balkan is a regional integration initiative as it promotes regional cooperation and good neighborhood relations as one of the EU values and criteria for EU membership. Therefore, the OBI goes on the same line and works towards achieving the same objectives and priorities as those of the previously launched Berlin Process. The Berlin Process reaffirmed the EU values and commitments of the WB countries to continue work for their EU common perspective, and thus:

At the Berlin Conference, the Balkan leaders promised to step up reforms for good governance, for the rule of law, and to facilitate active participation by civil society as well as the pluralism of the media. They also spoke in support of settling bilateral issues, promoting reconciliation, and developing regional cooperation, notably in terms of transport and energy (Mirel 2018, 12).

## THE PERSPECTIVE OF THE OPEN BALKAN

The readiness and degree of the countries taking part in the initiative’s perspective are to be assessed, as well as the outcomes the OBI will produce on the relevant concerns. However, remember that the OBI in its current configuration would be incomplete and unlikely to meet the stated full aims if none of the WB countries were included. Without going back to the large number of initiatives that over the years have been taken in the Western Balkan, it is worth mentioning that almost all of them have had in focus regional cooperation and EU integration, although their success remains arguable. Many “regional initiatives have been built up in the Western Balkans over the past years, and they continue to pop up every few years. However, their structures remain weak, vulnerable to shocks and occasional breakdowns, and they bring very limited change to regional cooperation and benefits for the citizens of all countries” (Balkan Policy Research Group 2020, 1).

In this context, it must be made clear that the Open Balkans Initiative encourages regional cooperation despite its lack of immediate promise and does not serve as a substitute for EU integration. As mentioned, the OBI is focused on openly declared objectives which consist of removing barriers and borders to citizens and businesses with identic features to those of the EU internal market. The “document also reiterated the importance of the free movement of goods, services, capital, and labor, with tangible targets, such as traveling with IDs and recognition of qualifications across the region. Finally, the document mentions the Thessaloniki

Summit (2003), Trieste Summit (2017), and EU Strategy for the WB (2018), implying that Open Balkan is not a replacement for the EU membership" (Semenov 2022, 28). The OBI clearly states, "Open Balkan is a demonstration of the progress we can make for ourselves. While the EU accession perspective remains the catalyst of our regional cooperation" (Skopje Business Forum 2021). The Open Balkan must be clearly understood as an initiative backed by economic reasons.

It aims to fully implement the EU's four basic freedoms to create a CRM similar to the EU internal market with economic benefits for the respective WB countries. Free movement

through the borders should facilitate trade, the movement of citizens, and the transfer of services between the three countries. Harmonized border crossing procedures and recognized work permits and qualifications of employees between Macedonia, Serbia, and Albania are the main economic benefits enabling greater regional cooperation (Miteva-Kacarski, Panova, Gjorgieva-Trajkovska 2022, 46).

The Open Balkan Initiative will be seen as a tool within regional cooperation that benefits the whole region. If all WB countries joined it, it would be able to reinforce the region's European perspective. Nevertheless, despite that, regional cooperation indeed means more than mere economic cooperation. In addition, the OBI's full integration capacities could be developed only when settling other bilateral issues among the parties.

## THE REGIONAL COOPERATION AMONG THE WESTERN BALKANS

The effectiveness of regional cooperation and, consequently, the extent to which it has increased confidence among WB countries was raised by the launch of the OBI. The OBI also emphasized that many outstanding issues within the WB affect the level of collaboration and, perhaps, even the destiny of the entire region. Such issues must be seriously considered as they are a barrier to enhancing future WB cooperation.

Taking into account several circumstances such as: at first - one of the components of the Open Balkan and the previously established Berlin Process has been the regional cooperation; second - the fact that the EU integration process where the WBs are part through the Stabilization and Association Process (SAP) and WBs have already signed the Stabilization and Association Agreements (SAAs); and at third - the fact that all the three WB countries which are the initiators of the OBI have acquired the status of the EU candidate countries<sup>8</sup>, therefore it might be raised the issue of reliability among the WBs and that of the effectivity of the EU instruments applied to WBs when dealing with regional cooperation.

As a result, it is possible to question how successfully the EU approach has been applied to the WBs, especially when fostering greater regional cooperation among WB countries. These factors include how far the WBs truly trust one another and how successful the EU approach has

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<sup>8</sup>Regarding the status of the other Western Balkan countries that were invited to join the OBI, Montenegro was given EU candidate status on 17 December 2010, after officially applying for EU membership on 15 December 2008. On the other hand, Bosnia and Herzegovina obtained EU candidate status on 15 December 2022, following their formal application for EU membership on 15 February 2016. Kosovo, which applied for EU membership on 14 December 2022, is still waiting to receive the status of an EU candidate country.

been in the past. It is evident that the EU's long-lasting commitment to the WBs has been met with variable success: "for years, the EU has been involved in a variety of interventions within the WB with mixed results (...) Originally, cooperation was conceived of secondary importance with respect to other EU priorities for the region, i.e., the rule of law, security, etc." (Hajdini 2020, 2-3).

Nevertheless, increasing regional cooperation remains *conditio sine qua non* for the success of every initiative, including the Open Balkan, to build a common future for the WB countries and work for their EU integration perspective. Due to its significance, regional cooperation should therefore receive the proper attention from the EU in addition to the WBs.

## CONCLUSION

As a regional initiative to achieve its goal for an open and borderless Balkans, the OBI should have the participation of all WB countries and the will to make the commitments come true. As a rare case in the Balkans, this initiative was not only not widely supported, but from the very beginning, it was opposed by the other three states of the Western Balkans, which were reluctant to join it.

The opposition to OBI and the reasons behind it sent the EU a clear message that the EU still stands as the WB's only final, trustworthy destination while also serving as a reminder that the WB needs to be even more committed and that there is still much work to be done in this area.

The highlighting of the mistrust between the countries of the WB should be taken as a clear signal that regional cooperation and reconciliation is still an issue that inevitably reflects and impacts the political decision-making in the WB. As such, the issues accumulated over the years and decades raised by the countries reluctant to join the WBs should be addressed to have a common future for the WB. Consequently, any cooperation offered to the Western Balkans, regardless of welcoming signals, may remain limited, stigmatized, affected by feelings of mutual mistrust, and a "hostage" to resolving outstanding issues.

The WB countries have not always been successful in overcoming their shared problems and challenges. Therefore, the EU should take a more active role in the region by helping countries prepare for EU membership and convincing the WB to jointly and appropriately address outstanding issues, such as achieving reconciliation and viewing one another as trustworthy partners, increasing cooperation, and working toward EU integration.

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# REGULATING FAKE NEWS IN TRANSNATIONAL JURISDICTION: A COMPARATIVE STUDY OF BRAZIL AND ARGENTINA

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**Abstract:** Many oppressive governments have passed cyber laws, cracking down on free speech, and used less traditional tactics to restrict people's capacity to speak freely and in public. This is particularly true in nations where the government regulates media and information flow due to closed information systems. Laws regulating fake news clash with citizens' free speech and expression rights. The paper gives an overview of the hurdles in regulating transnational cases of fake news. In cases of cross-border jurisdiction, it becomes vital to examine International legal standards, such as international agreements and international institutions governing fake news. In this paper, we look at two case studies, one from Argentina and one from Brazil, to see how these countries have dealt with the issue of fake news in cases involving transnational jurisdictions. The paper concludes with the observation that various governments employ a variety of approaches and policies in order to combat fake news.

**Keywords:** Fake News; Cross-Border Jurisdictions; Freedom of Speech; Regulations

## INTRODUCTION

Lies have consistently been used to influence public opinion throughout history. However, the recent electoral procedures that took place over a tainted public debate led to the emergence of fake news as a modern phenomenon. The phenomenon has appeared repeatedly in several electoral processes since Donald Trump was elected president of the United States in 2016 with different intensity and influence. For many observers, the future of democratic systems is seriously threatened by fake news. States from all over the world have responded differently to this challenge. Some have attempted to control the practice and place onerous requirements on intermediate platforms, where fake news thrives, to moderate the content they permit. Others have worked to raise public awareness of deceptive information efforts by educating people about their presence. On the other hand, businesses have pushed to act in response to mounting and frequently conflicting pressures from international NGOs, academics, legislators, regulators, and state institutions (Klein and Wueller, 2018).

Media experts frequently say that "fake news" consists of two different forms of information: misinformation and disinformation. Disinformation is described as the deliberate spread of false news meant to mislead the public, in contrast to misinformation, which is sometimes defined as any erroneous information, regardless of motivation (Gelfert 2018).

For instance, historically speaking, First Amendment free speech rights have always been given to misleading information in the United States (US). Given that spreading incorrect information online can easily result in financial gain, there has recently been a greater motivation to do so. One of many examples is how Cameron Harris, a recent college graduate, made around \$22,000 during the US presidential campaign of 2016 by fabricating and publishing fake news pieces online (Monti 2021). Entrepreneurs in North Macedonia adept at using the internet are also known to fabricate news stories to profit from the “gold rush” of disinformation. In addition, people tend to trust programs like Google Search when looking for information while being aware that the economic models of online platforms are supported by the attention economy focused on user-generated content and engagement with such content (Albright 2017). Even though “spammers” can change search rankings and machine learning can have unintended side effects that create biases, it has been suggested that this is due to a learned heuristic that the search results are helpful and in the right order. In this way, Google’s economic dominance over the web and its effect on developing current and future digital standards do not get as much attention as they should (Jacobs 2022).

Thus, it has been suggested that the propagation of misleading information is a social issue that has unfavorable externalities by endangering the public’s ability to trust reputable news sources and the capacity of conventional journalism to play its part in upholding democratic institutions (Sperti 2022). The World Economic Forum has identified the spread of disinformation as a threat to human society due to how ubiquitous the issue has become (Park and Youm 2018). To re-establish the credibility of the Fifth Estate (i.e., non-mainstream media, which includes bloggers on social media) and the Fourth Estate (i.e., persons and organizations that report the news), there is a need to limit the amount of fake news content (Smith, Perry, and Smith 2021). Many have realized that a comprehensive strategy to combat disinformation would include the introduction of new legislation as well as the adoption of indirect policy remedies. This goes beyond better educating internet citizens to recognize bogus news (Lazer et al. 2018).

Due to the interconnectedness of communications, regulating fake news is a particularly interesting comparative law topic. As a result, the current paper reflects case studies of fake news regulations in Argentina and Brazil.

## METHODOLOGY

The present paper is a case study of two vital cases: Criminal Investigation No. 4781 from Distrito Federal - Brazil (commonly known as a Fake News Case) and Federal Criminal and Correctional Chamber - Argentina (Case No. CPF 8553/2015/4 / CA3 “C., E.). The methodology is doctrinal and non-empirical. The research aims to answer the following research question (RQ1): Whether national courts can have extra-territorial jurisdiction in cases of fake news?

## UNDERSTANDING FAKE NEWS AS AN OPINION

A typical definition of fake news is intentionally false factual statements disseminated through news sources. Different sorts of fake news should not be confused for legal purposes, but current usage is still in flux. No matter the author’s goal, news articles that are purposefully

produced are fake news in the strict sense (false news). However, more subtle ways exist to use knowledge to affect people's attitudes and actions. It is possible to frame and convey accurate information to encourage listeners to make particular (erroneous) inferences. This is false information in a broader sense (distorted news). Such reporting promotes and panders to the audience's biases. These assumptions can forecast the (wrong) inferences a viewer may draw from a certain presentation of actual data if they are well-established. Think about a news source that focuses solely on crimes perpetrated by foreign nationals.

This idea of fake news will be put to the test against the reporting of the 2016 "Lisa case" by the news organizations Sputnik and RT (formerly Russia Today), which receive funding from the Russian government and have a history of being accused of fabricating stories to undermine Western societies by casting doubt on the reliability of Western institutions. This assessment is shared with numerous academics by the US intelligence services, the European Parliament, and the French President (Nasu 2021).

A 13-year-old Russian-German girl named Lisa vanished in Berlin in January 2016 for roughly 30 hours. Lisa's aunt claimed that she had been kidnapped and raped by foreigners, and Channel One in Russia (also known as Pervij Kanal) was the first to report this. The German-language Sputnik carried the same information. According to Lisa's relatives, the German police declined to investigate the situation, according to both media agencies. Later, the official police statement stating that there had been no kidnapping or rape was appropriately reported by Sputnik. It also detailed the prosecution's announcement that it had opened an inquiry into Lisa's alleged sexual abuse as a minor, which involved voluntary but technically illegal non-consensual intercourse with an older male prior to the girl's disappearance (Liesem 2022).

Sputnik reported all the details while framing the incident as evidence that security issues have worsened in German towns since the 2015 immigrant crisis. Sergey Lavrov, the foreign minister of Russia, made the same connection at his yearly press conference, which took place at the same time as the probe. For whatever reason, the circumstances surrounding the loss of a Russian girl in Germany were kept quiet for a very long period. We are at least in contact with her attorney, coordinating with her family and the Russian Embassy. Lisa did not exactly choose to vanish for 30 hours. Justice and truth must prevail in this case. In an interview with RT, the family's attorney responded to the prosecutor's assertion, contrasting the (frivolous) claim of a recent kidnapping and rape with the alleged earlier sexual assault. In 2017, RT accurately revealed that a man had been charged with sexually abusing Lisa while she was a juvenile. RT also called out the "mainstream media" for accusing Lisa of lying and for traumatizing her by using her case as a platform to attack RT. Following this reporting, more than 700 people of Russian descent demonstrated in front of the Chancellery in Berlin, and many more did so elsewhere. At the time, German Foreign Minister Frank-Walter Steinmeier dismissed accusations of wrongdoing by the German authorities as "political propaganda". However, he refrained from calling them an intrusion into German internal affairs. Initially, the police held back the information out of respect for the girl and her family's right to privacy. Details about the girl's mobile phone's GPS tracking, which revealed that she had spent the time before going missing at a friend's house, were only revealed afterward. Since what was published is technically speaking genuine, RT and Sputnik's coverage of the tragedy is not fake news in the strict sense. However, given the deceptive nature of the information's presentation,

particularly its selectivity and framing, the label “distorted news” appears appropriate. Reporting in the Lisa case primarily drew on the previous New Year’s Eve events in Cologne, when hundreds of women had been sexually assaulted, mostly by people who appeared to have immigrant backgrounds. Some believed this was due to “political correctness”, which aimed to mislead the public about the severity of the issues brought on by the immigrant crisis. A similar interpretation of the Lisa case, reinforced by Lavrov’s statement, became feasible because of this way of thinking (Mejía-Trejo 2021).

## INTERNATIONAL MEASURES

Article 19 of the Universal Declaration of Human Rights (UDHR) states that “everyone has the right to freedom of thought and expression, including the freedom to hold opinions without interference and to seek, receive, and spread knowledge through any medium and without respect to boundaries”. Even while the UDHR itself is not enforceable, much of it has been incorporated into international law.

Article 19 of the International Covenant on Civil and Political Rights (ICCPR) includes this basis. The ICCPR declares that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media of his choice”. This provision is nearly identical to the UDHR.

Furthermore, all types of audio-visuals, electronic, and internet-based platforms of expression are included in the cross-border media to which article 19 refers. Both Brazil and Argentina are signatories to the International Covenant on Civil and Political Rights. Violations of the International Covenant on Civil and Political Rights may be reported to the International Court of Justice (ICJ).

Nearly identical phrasing is used in Article 13 of the American Convention on Human Rights (ACHR) to safeguard the international right to freedom of expression locally. The American Convention on Human Rights takes a step further, instructing Member States to address expression through the subsequent imposition of liability rather than prior censorship. Additionally, it lists prohibited prohibitions such as governmental control over newspapers and other media (Albuquerque and Matos 2022). The International Covenant on Civil and Political Rights and the American Convention on Human Rights provisions under discussion give States a narrowly defined legal exception for limiting free speech, including in response to public order and national security concerns. However, it is a high bar to clear, at least in the context of the International Covenant on Civil and Political Rights, because expression cannot be restricted unless it is mandated by law and done so for a justifiable reason.

## International Institutions

The Organization of American States (OAS) seeks to advance wealth and development among its Member States while bolstering peace and security within the Americas. Brazil, Argentina, and the other thirty-five independent States in the Americas, all of which have approved the Charter of the Organization of American States, are OAS Member States. Political



commitments are offered as “guidelines” by the Organization of American States. The Organization of American States does not require States to keep their political obligations, even though it is recommended. The Organization of American States’ proposals includes advice on dealing with fake news (Aymanns et al. 2022).

The Organization of American States has noted how social media and digital platforms serve as intermediaries in the information flow. While this can ease the flow, it also significantly impacts public discourse, and “a number of governments, especially authoritarian ones, have tried to pressure them to help shape the flow of information according to their interests” (Colomina, Margalef, and Youngs 2021) according to the OAS. The Organization of American States handbook also advises that “the States in the region should not adopt new criminal forms to penalize the dissemination of false information or fake news in accordance with the criteria of the inter-American human rights system” (Aymanns et al. 2022). The States could introduce criminal consequences, which would be imprecise or vague given the nature of the phenomenon, to justify criminalizing the critics or individuals involved in public interest problems. A strong chilling effect would be produced on the expression of opinions, criticism, and information resulting from this, which would be especially constrictive in the context of the electorate. Other OAS proposals include supporting universal internet access, shielding journalists and social communicators from harm, enhancing data privacy and transparency, and opposing state legal frameworks that make intermediaries accountable for the material produced by third parties. The OAS has numerous aspirational frameworks for battling state-sponsored misinformation, but their efforts are not legally binding since they are political commitments.

The Inter-American System of Human Rights, which also has its headquarters within the OAS, includes the Office of the Special Rapporteur for Freedom of Expression, the Inter-American Commission on Human Rights, and the Inter-American Court of Human Rights. Remembering that the Inter-American Court must interpret and apply the American Convention (Liesem 2022) is important. In addition to compiling reports on free speech in America, the Special Rapporteur helps the IACHR assess claims for the right to freedom of expression. The IACHR looks into allegations of human rights abuses and works to uphold those rights locally.

## JUDICIAL PRECEDENTS IN BRAZIL

### Facts

The Supreme Federal Court is looking into the existence of systematic use of accounts on social networks to produce, publish, and circulate false material as part of Criminal Investigation No. 4781 from Distrito Federal - Brazil (commonly known as a Fake News Case). A group of Jair Bolsonaro’s supporters’ Facebook, Twitter, and Instagram profiles were ordered to be blocked on 26 May 2020 by Alexandre de Moraes, Minister of the Supreme Federal Court. These characteristics would be used to conduct crimes against honor and crimes against criminal association (exemplified in the Penal Code in sections 138, 139, 140, and 288) and crimes against national security (exemplified in Act 7.170/1983, sections 18, 22, and 26). The probe specifically refers to assaults on the National Congress and the Supreme Federal Court (Omari 2021).



However, some individuals under investigation disobeyed the ruling by altering the websites' location settings to make it appear that they were posting from different nations. The magistrate ordered the social networks to prohibit access from any IP (Internet Protocol), whether it originates from Brazil or elsewhere, effective July 28, 2020. He set a daily punishment of \$20,000.00 for each unlocked profile to ensure compliance (The Case of the Brazil Fake News Inquiry 2021).

### **Contentions of Appellants**

Twitter declared that it would appeal the ruling but would nonetheless follow it. While claiming the ruling was unlawful, Facebook said it would refuse to follow it. As a result, it would continue to offer those under investigation access and the ability to publish by connecting to outside accounts, enabling content viewing within the country. "We observe the laws of the countries in which we operate" (2020), claimed Facebook. Given that Brazilian law acknowledges the boundaries of its jurisdiction and the legitimacy of other countries, we have filed an appeal with the Supreme Federal Court challenging the decision to block the accounts internationally.

### **Court Decision**

In Criminal Investigation No. 4781 from Distrito Federal judgment, minister Alexandre de Moraes issued a new decree raising the daily fee for an unblocked profile to \$100,000.00. The magistrate stated in his reasons that the social network Facebook:

must respect and effectively comply with direct commands issued by the Judiciary regarding facts that have occurred or with their persistent effects within the national territory; it is incumbent upon him, if deemed necessary, to demonstrate its non-conformity by means of the resources permitted by Brazilian law (The Case of the Brazil Fake News Inquiry n.d.).

He finally realized that:

the blocking of social network accounts decided in this case, therefore, is based on the necessity to stop the continuity of the disclosure of criminal manifestations, which, in particular, materialize the criminal offenses found in this investigation and which continue to have their illicit effects within the national territory, including the use of subterfuge permitted by the social network Facebook (The Case of the Brazil Fake News Inquiry n.d.).

Last but not least, he claimed that "the subject of national jurisdiction over what is posted and watched abroad is not considered, but the spread of criminal facts in the national territory, through news and commentary by banned accounts" (The Case of the Brazil Fake News Inquiry n.d.). Following this ruling, Facebook announced the global blocking of the accounts under investigation.

## JUDICIAL PRECEDENTS IN ARGENTINA

### Facts

On 14 March 2019, the judge of the grade in Argentina issued a ruling ordering Google to take down any URLs that included the supposed detention of Enrique Santos Carrió for drug and weapon possession in Mexico from its web browser's search results. Enrique is the son of Elisa Carrió, a prominent politician in Argentina currently the National Deputy (Milillo et al. 2022). The order expanded the prohibition to include three domains outside the country: [www.google.com](http://www.google.com), [www.google.com.es](http://www.google.com.es), and [www.google.mx](http://www.google.mx).

### Contention of Arguments

Dr. Arnaldo Cisilino, the attorney for Goggle, filed an appeal against the magistrate's refusal to grant the party's request to invalidate the prolongation of the preventative measure put in place against their client's wishes. The appellant deemed the resolution unsuitable and argued it should have been sent to the news portals in charge of the publication about which it makes the untruth claim. Only in this way, the appellant underlined, could identical information spread to other URLs be stopped. It further claimed that the contentious decision intended to broaden its application to areas outside the purview of Argentine courts (Klein and Wueller 2018).

The blocking or deletion of the pages from such nations can only be done in compliance with the relevant local legislation. On the same road, the difficulty of a State interfering in the territory of another State without that State's consent was expressed through the invocation of general principles of state sovereignty, international courtesy, and resolutions passed at the international level. If Google implemented the contested judgment, it would violate the legal framework in the nations affected by that measure. It would have an impact on the domain or services that are subject to foreign law. For an Argentine magistrate to have the authority to decide what content may be read or found globally through the internet, the appellant pointed out that removing certain things from Google.com would also mean deleting them from all global servers. This would mean legitimizing other states' potential to similarly participate in excluding specific content following their national laws, with the grave repercussions that such a situation could entail. It warned that the spread and approval of orders like the one in question here would create a significant barrier to the freedom of expression and the ability to seek, receive, and disseminate information freely. In other words, it is believed that the problematic measure's expansion should be revoked to prevent illegal meddling in areas outside the intervening magistrate's territorial jurisdiction (Nogueira da Silva et al. 2022).

### Court Decision

On 16 June 2020, the Court in the present case (Case No. CPF 8553/2015/4 / CA3 "C., E.) acknowledged the complexity and difficulty of labeling the news as fake. These classifications, however, cannot be imposed on foreign jurisdictions unless they do so through judicial

cooperation processes that do not infringe on their legal framework. According to its interpretation, “the core of this controversy concerns the principle of the territoriality of law, which prevents the possibility of taking for itself the prerogative to prohibit the global dissemination of certain press content whose disclosure would be prohibited under the local regulatory framework, but its circulation may be authorized in the context of another territory”. Based on this, the National Chamber of Cassation in Criminal and Correctional Matters decided not to implement the suggested preventative step, with the knowledge that, if it so chooses, the judge *a quo* may request actions to limit the distribution of such news from foreign authorities through judicial cooperation (Jacobs 2022).

## CONCLUSION

The challenge in assessing the extent of national court jurisdiction over the internet is demonstrated by the two criminal court judgments looking into the dissemination of fake news. In Argentina, Google overturned a ruling that removed a person’s name from search engines located abroad. In this instance, the searcher falsely linked a person’s name to offenses, including possessing firearms and drugs. However, in Brazil, Twitter and Facebook were compelled to permanently restrict a person under investigation from accessing their accounts. These individuals are being investigated for their involvement in the online distribution of materials that defame members of the legislative and judicial branches of government. Even though these rulings were made in the context of criminal cases, the problems they raise are concerns that also occur in civil situations. Both judgments were made against businesses with branches in Argentina and Brazil, the countries where the courts have jurisdiction. However, they differ on how much that jurisdiction extends to fulfilling orders outside those countries.

On the one hand, the notion that the requirement to block access or remove content entails a duty to do so outside the national area. As a result, this choice must go via the international cooperation’s regulatory systems to impact outside the country’s borders; otherwise, other countries would be invaded. Not to mention the problems that occur from the perspective of the applicable law, according to what constitutes a defamatory act in each State and what the boundaries of free expression are. On the other hand, it is understood that regardless of where and how it takes effect, a corporation with legal personality in the nation must comply with this obligation to comply, as set down in national law. This dispels rumors about potential invasions of foreign sovereignty and concerns about potential changes in legal definitions of what constitutes legitimate expression and what is not. This discrepancy raises questions about the three traditional pillars of private international law: international jurisdiction, applicable law, and international legal cooperation. Moreover, the difficulties that the internet’s widespread use provides for this field of study cannot be ignored. The extra-territorial jurisdiction varies from one country to another.

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# US-CHINA RIVALRY IN SOUTHEAST ASIA REGION: A STUDY ON THE SOUTH CHINA SEA CASE

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**Abstract:** *Southeast Asia is one of the places where fierce rivalry is taking place between the two leading powers in the world today - the US and China. The US-China rivalry in this region takes place in key fields, from politics - diplomacy, economy, security - defense to "soft power", the most prominent of which is the South China Sea issue. This article analyzes the strategic importance of the South China Sea in the policy of the US and China, the competition between the US and China in Southeast Asia in general, and the South China Sea in particular. To achieve this goal, the authors use research methods in international relations to analyze the main issues of the study. In addition to reviewing previous scholarly research and reviews, the authors use a comparative approach to assess the interactions between theory and data. The authors believe the data is important for accurately assessing the strategic competition between the US and China in Southeast Asia and the South China Sea. The rise of China in the early years of the XXI century strongly influenced the adjustment of the US policy in Southeast Asia and the powerful US-China rivalry in this region and the South China Sea. This rivalry is becoming increasingly complicated, and geopolitical conflicts between major powers are possible in the following years.*

**Keywords:** *China; Rivalry; Southeast Asia; South China Sea; US*

## INTRODUCTION

Since the end of the Cold War, although the level of "hot and cold" has occasionally been different, the US-China strategic competition is still the main axis that governs the current international political "chessboard". Reviewing the development of international relations in the modern era, it can be seen that the evolution of the US-China relationship has always been the main concern of each participant and the international community because of the influences from the relationship between the US and China. This is the world's most important bilateral relationship in the XXI century between the power that has established its position on the international stage (United States) and the rising power (China). Under the leadership of President Xi Jinping, China has "risen, become prosperous, and is growing stronger" (Beckley and Brands 2022, 2). At his first press conference in March 2021, US President Joe Biden said that China wants to "become the leading country in the world, the richest country in the world, and the most powerful country in the world" (Zhou 2022, 27). The US-China relationship has always been at the heart of international relations in recent decades. The relationship between these two powers has been fiercely competitive, from political, economic, cultural, and soft power to military security. Furthermore, Southeast Asia

is also one of the “focal points” of the strategic competition between these two great powers, the US and China.

Located on the southeastern shore of the Eurasian continental strip, directly adjacent to the Pacific Ocean and the Indian Ocean, Southeast Asia has rich natural resources and the world's lifeblood shipping lanes. This area is considered an intersection point, interwoven with the strategic interests of major countries such as the US, China, Russia, Japan, India, etc. Due to the advantages of geostrategic location and special characteristics other natural, economic, and social characteristics, this area has always been an area of competition for influence from many great powers, the most prominent of which are the US and China. Southeast Asia is the epic of this global rivalry, and the region will be considered by the US-China rivalry much more than most ASEAN states recognize or care to admit (Shambaugh 2021, 242). During the Cold War, Southeast Asia was once a hot focal point of the East-West confrontation with the dominance and complex interaction of the Soviet-US-China strategic triangle competition. Southeast Asia became the subject of competition between the United States, the Soviet Union, and China (Heiduk 2021, 132). Since the end of the Cold War, especially since the first decades of the XXI century, Southeast Asia has become increasingly important internationally, not only from a geopolitical and military perspective but also from a geostrategic, geo-economic, and cultural perspective. ASEAN has become an indispensable partner of major countries and international organizations, an important factor in promoting dialogue and cooperation processes at various levels in Southeast Asia, particularly the Indo-Pacific. This is one of the leading reasons why the US and China are increasingly competing strategically to expand their influence in Southeast Asia in the XXI century.

In the US-China strategic competition in Southeast Asia, the East Sea has become an area where these two powers compete fiercely for influence. China increasingly shows its ambition to turn this sea into a “home pond”, considering the East Sea a “core interest”. China's increase in military potential and aggressive and pressured behavior in territorial and maritime disputes in the East Sea with several Southeast Asian countries (Vietnam, the Philippines, etc.) is a major concern for the US, and the US-China conflict is becoming more and more profound. US and China have come to view the South China Sea as center stage for their geopolitical maritime rivalry (Feng and He 2018, 30).

## **AN OVERVIEW OF THE US-CHINA RIVALRY IN THE SOUTHEAST ASIA REGION**

Southeast Asia is an inseparable part of the Asia-Pacific region. It has long been a key strategic area and a disputed place for the influence of cultures and major countries worldwide. From the geostrategic perspective, Southeast Asia is located in an area favorable for international trade and defense, located at the intersection of Asia, the most convenient maritime route from the Indian Ocean to the Pacific, between Northeast Asia and the South Pacific (Tran 2002, 60). This area holds a very important position with the seaport system and strait and is one of the key trade routes in the world, including the Strait of Malacca - a key location of the freight sea route from East to West. According to estimates, the maritime route through the Strait of Malacca accounts for a quarter of the world's marine traffic, with more than 60,000 vessels passing through this strait annually (Tarling and Chen 2017, 25). The amount of

crude oil transported through the Malacca Strait annually usually accounts for 85% to 90% of the total oil volume of the world (US Energy Information Administration, 2017). With the above position, Southeast Asia has become a key “link” of the connection between Asia and Europe, Southwest Asia, the Middle East, North Africa and Northeast Asia, and North America. Since the Cold War’s end until now, Southeast Asia has been considered a strategic focus in the policies of the US and China in the Asia-Pacific region.

For the US - first of all, as a sea power geographically surrounded by two oceans (Atlantic and Pacific), the US considered controlling the ocean especially important in controlling the world. In the context of increasing globalization at the beginning of the XXI century, Southeast Asia holds a more important position in the US maritime strategy and sea power. This region continues to be traversed by the world’s busiest and most important sea routes. During the early two decades of the XXI century, when the balance of world power was shifting from Europe-Atlantic to Asia-Pacific, the US advocated setting up a new regional cooperation framework in Asia-Pacific in general and Southeast Asia in particular, including ensuring the security of the South China Sea.

Secondly, since the September 11 terrorist attack, which provided a new strategic context for defense ties (Thayer 2010, 16), when the US aggressively implemented its international counter-terrorism strategy, Southeast Asia has become one of the ideal places of refuge for Islamic extremist forces. In that context, the increasing influence of Russia, China, Japan, and India in this region has made the US more concerned. The US has positioned the region as the second front in the global war on terror to avoid losing its influential role in Southeast Asia. The US encourages “cooperation with partners in the region to make concerted efforts to squeeze, constrain, and isolate terrorist groups” (The US White House 2003). The complicated situation of separatist and terrorist forces in this region makes the US aware that the need to engage more deeply in regional affairs is essential to fighting international terrorism.

Thirdly, Southeast Asia has emerged as an attractive region for foreign business, especially China, because it has had more favorable conditions than other countries. Therefore, the US cannot be slower in the economic competition with other major countries, which could destroy opportunities for highly profitable economic businesses from Southeast Asian countries. The US needs to import a wide variety of products from Southeast Asian countries and increase the number of goods exported to countries in the region to ensure benefits not only in economics but also in the political and security realm.

Chinese interests in Southeast Asia are manifested in many fields and aspects. In terms of geoeconomics, with close geographical advantage, being a region with abundant resources and dynamically developing economies, Southeast Asia has long been one of the important economic partners of China, greatly contributing to the development of this country. Dubbed “the factory of the world in the XXI century”, China desperately needs a favorable international environment for its exports. Southeast Asia is seen as a large and potential market for China. The top priority of China’s foreign policy is maintaining a stable peripheral environment to safeguard normal economic circumstances at home. China regards establishing long-standing and stable good relations with ASEAN as an important factor in attaining this goal (Bert 2003, 112). In terms of geopolitics, in recent years, ASEAN is emerged as one of the most successful regional connection and cooperation organizations, demonstrated by the establishment of the ASEAN

Community with three pillars (politics-security, economy, and culture-society), which has become an important geopolitical pole in the multipolar world order that is taking shape in the twenty-first century. As a neighboring country with Southeast Asia, China cannot afford to pass up the opportunity to establish its major status here. The once-established dominant influence in Southeast Asia also means that China has built the basis to establish a greater influence in the international arena.

Regarding marine geostrategic, since the financial-monetary crisis of 1997-1998, China has become more aware that they depend on huge into Southeast Asia in matters of security and economic development. China is the second largest oil importer in the world (after the US) and consumes half of the world's cement, a third of iron and steel, a quarter of copper, and a fifth of aluminum. These goods were transported via many choke points in Southeast Asia, such as the Strait of Malacca, Sunda, Lombok, and Makasar, as well as other locations in this sea. Moreover, the South China Sea is also the territorial water with abundant oil and gas reserves, so China wants to capture, exploit and use oil and other resources in this region. China wants to monopolize the South China Sea and repel the US's influence here because China believes that if the US increases its influence in the territorial waters, it will threaten China's multifaceted interests, not simply commercial and economic benefits.

As two ambitious powers, the US and China consider Southeast Asia a key location for them to increase their influence and multifaceted interests. To achieve this goal, the US encountered a formidable competitor China, so this country needed to cooperate with Southeast Asia and take advantage of ASEAN countries as a factor for stability and balance of forces in the region, creating as far an American-friendly Southeast Asia as possible, not least becoming China's "backyard", or rather curbing China's rise in its control. Meanwhile, China wants to rely on its superiority and advantages in Southeast Asia to dominate this region, taking a key role here to prevent the US policy of restraint and repel the US's influence to give China a larger role in the international arena. The rivalry between these two great powers in the first two decades of the twenty-first century took place fiercely in many key areas.

About politics and diplomacy - if in the 90s of the XX century, the US seemed to have "neglected" Southeast Asia, then at the beginning of the twenty-first century, this region would become an important "link" in the adjustment of the US global strategy. Since the second term of President George Walker Bush, the US has advocated creating a channel of regular dialogue and promoting policy towards Southeast Asia. In early 2010, the Obama administration announced its re-engagement policy in East Asia. This policy aims to strengthen US diplomatic and security commitments in the region by strengthening bilateral alliances and supporting regional multilateralism. ASEAN's role in regional peace and security has been promoted through the ASEAN Regional Forum (ARF), Treaty of Amity and Cooperation in Southeast Asia (TAC) with partners. The US side also actively participates in ASEAN-led forums and security mechanisms such as ARF, East Asia Summit (EAS), ASEAN Defense Ministers Meeting Plus (ADMM+), and Expanded ASEAN Maritime Forum (EAMF), etc. The United States has intensified its involvement in key issues in Southeast Asia, especially the East Sea, other non-traditional security issues, and the artificial balance of relations with regional powers. It can be said that the US is gradually returning to Southeast Asia to establish its dominant position in each country in

the region and ASEAN, thereby grasping the dominant role in regional political and security issues.

On the Chinese side, over the past decade, along with the strong rise, China increasingly attaches great importance to and enhances the role of ASEAN, asserting its interests in ASEAN relations. China-ASEAN cooperation has developed rapidly and has become deeper and deeper. Compared with all other powers outside the region, China is now considered the most active and influential country in the policies and programs in politics and economics. ASEAN economic, security, and diplomacy. On the one hand, China claims to pursue a foreign policy of autonomy, not forming military alliances that oppose each other; on the other hand, China is changing its policy towards multilateral institutions towards actively participating, strongly supporting institutions such as ARF and ASEAN+3. China has established a strategic partnership with ASEAN dedicated to peace and prosperity in the region and engaged in comprehensive cooperation that has seen rapid expansion. Cooperation in East Asia, with the ASEAN and China, Japan, and the ROK as the main players, keeps expanding, leading to greater economic development and political and security trust in the region (Goh and Simon 2008, 148).

Trade and economy are very important areas in the US-China strategic competition. The US economic strategy in Southeast Asia, both in the immediate and long term, aims to turn this region into a Western-style liberalization market in general and to create a market for US high-tech goods in particular. Therefore, the US continues to expand bilateral economic relations with countries in the region while seeking ways to enhance APEC's role in promoting free trade, investment, and development cooperation. In order to create an advantage in competing for economic influence in Southeast Asia, both the US and China are focusing on strengthening economic-trade relations with the region. The rivalry between the US and China to win the Southeast Asian market is becoming increasingly fierce. In addition, the presence of the world's leading major economies in this region also increases the strategic value of ASEAN.

About military and defense - since the Cold War, the US has become the nation holding the largest military role in the world in general, in Asia-Pacific in particular. However, in the first decade after the Cold War's end, when the US reduced its presence in Southeast Asia and pulled its troops from military bases in the Philippines and Thailand, it showed little interest in ASEAN's affairs. China quickly filled the "power gaps" in Southeast Asia. Entering the XXI century, the 9/11 terrorist attacks and the global strategic adjustment created a new turning point in the US policy towards Southeast Asia. The US has placed the task of counter-terrorism at the forefront of its foreign policy adjustment to assert its superiority over American interests in Southeast Asia in the early XXI century (Weatherbee 2008, 170). The US returned to Southeast Asia after three decades of "neglect" since its withdrawal from Vietnam in 1973. The return is based on US strategic considerations at the international level, particularly anti-terrorism. One of the main objectives is to influence China. China's military might pose a short-term danger to the regional balance and the American military's undisputed dominance. China's People's Liberation Army Navy (PLAN) is developing roles and missions that permit it to project power beyond its territorial sphere of interest into the Western Pacific and South China Sea. Admiral Mike Mullen, Chairman of the US Joint Chiefs of Staff, stated that the strategic intent behind China's development of new capabilities seemed to be "very focused on the United States Navy and our bases that are in that part of the world" (Mullen 2009). In particular, the construction of the Yulin

Naval Base near Sanya, on Hainan island, provides China with a forward presence to exercise its sovereignty claims over the South China Sea and protect its sea communication lanes through the Malacca and Singapore straits (Thayer 2010, 8).

## THE RIVALRY BETWEEN THE US AND CHINA IN THE SOUTH CHINA SEA IN THE FIRST TWO DECADES OF THE XXI CENTURY

### The Geostrategic Position of the South China Sea

The South China Sea is Southeast Asia's heart (Weatherbee 2008, 142). The International Hydrographic Bureau defines this territorial water as the "semi-enclosed sea"<sup>1</sup> stretching in a Southwest to Northeast direction, whose southern border is 3 degrees South latitude between South Sumatra and Kalimantan (Karimata Straits), and whose northern border is the Strait of Taiwan from the northern tip of Taiwan to the Fukien coast of China (Pumphrey 2002, 230). From a very early age, the South China Sea has become a passageway of maritime trade flows connecting the Pacific and Indian Oceans. In the current development trend, it can be said that the South China Sea has become the "regulating valve" of trade flows, especially the oil transport route between Middle East countries, Africa, and East Asia (Office of the Secretary of Defense 2009, 4). Due to the above advantages, the geostrategist Nicholas Spykman once described it as the "Asiatic Mediterranean" (Kotani 2011).

The South China Sea has a vital importance and geostrategic position not only for the surrounding countries and territories but also for East Asia and the world. First, the South China Sea is located on the arterial maritime route connecting the Pacific Ocean with the Indian Ocean, Europe-Asia, and the Middle East-Asia. Located in the "crossroads" position, controlling the trade route from the Indian Ocean to Northeast Asia or Australia or through the Americas (where there are major economies in the world such as the US, China, Japan, Russia, Canada, South Korea, Australia, etc.), the South China Sea occupies an increasingly important position in planning development strategies of many countries. If taking the South China Sea as the center with a radius of 1,500 nautical miles, there are important ports such as Bangkok, Calcutta, Singapore, Jakarta, Manila, Taipei, Hong Kong, Shanghai, and Nagasaki; within a radius of 2,500 nautical miles, there are more Bombay, Bali, Darwin, Guam, Tokyo, Yokohama, Seoul, etc.

In addition, the South China Sea region also has important straits for many countries and 4 out of 16 strategic roads of the world located in Southeast Asia, such as Malacca, Luzon, Lombok, Sunda, Makascha, and Ombai-Wetar. In particular, the Strait of Malacca (between the Indonesian island of Sumatra, Malaysia, and Singapore) is extremely important because all goods from Southeast Asia and North Asia must pass through the South China Sea. This is also the strait with a bustling number of ships and boats, and the annual amount of oil transported here occupies the second position in the world after the Strait of Hormuz (Iran). The South China Sea is especially important because some of the most frequented sea lanes for global trade, and more than two-thirds of the annual merchant fleet tonnage passes through it. The South China

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<sup>1</sup>Following UNCLOS, "enclosed or semi-enclosed sea" means a gulf, basin or sea surrounded by two or more states and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal states.



Sea connects East Asian economies (China, Japan, South Korea) with Europe and the Middle East (via the Indian Ocean). It is estimated that roughly three-quarters of the annual world oil and natural gas trade passes through the South China Sea, and 80% of China's crude oil imports arrive via its sea lanes (Pradt 2016,139).

Besides its strategic location, the South China Sea also contains rich resources, serving as a basis for economic development for countries in the region. The US Energy Information Administration estimated that the sea contained just 11 billion barrels of oil and 190 trillion cubic feet of gas as commercially viable reserves. Based on what is known about the region's geology, the US Geological Survey estimated yet-to-be-discovered resources at around 11 billion barrels of oil and 4 billion barrels of "natural gas liquids" - making a combined total of 15 billion barrels. The US Geological Survey estimated that undiscovered gas resources could be more significant - between 70 and 290 trillion cubic feet (Hayton 2014, 149). The great benefits and potential for development have stimulated the ambitions of many powers to "control" the South China Sea, making it "stirring" for many decades.

With rich resources, especially the potential for oil and gas, the South China Sea is now becoming a "hot spot" for disputes among the concerned countries, both inside and outside the region, between the expansion and protection of sovereignty is the centerpiece between the intention of monopoly and "freedom of navigation", between China's Belt and Road Initiative and US's Indo-Pacific strategy. In particular, the South China Sea has become a competitive area for traditional influences of the two largest powers in the world today, the US and China.

### **The US-China Influential Rivalry at the South China Sea**

As a sea area playing a vital role in the trading system in Asia-Pacific, the South China Sea is increasingly attracting the attention of countries worldwide because of its rich resources (fisheries, oil gas, energy, etc.) and growth potential. This territorial water has played a major role in facilitating societal interactions in Asian history. During the Second World War, it was a major military theatre; during the Cold War, it became an area for the US's surveillance and containment of China. Since the turn of the millennium, in addition to its importance for facilitating intra- and inter-regional trade routes or Sea Lines of Communication (SLOCs), this sea has become a field of competition regarding access to and control over both marine and mineral resources (Truong and Knio 2016, 1). Currently, the South China Sea has become a convergence of strategic interests of many countries worldwide, especially the US and China.

For the US - the South China Sea holds the US's significant economic interests. The South China Sea passes more than half of the world's annual merchant fleet tonnage and about one-third of global maritime commerce. Many oil and gas imports to China, South Korea, and Japan pass through the South China Sea (Graham and Tsjeng 2014, 48). The South China Sea contains 3 of the 16 international key waterways the US claims to control: Lombok Strait, Sunda Strait, and Malacca Channel. The country that dominates the South China Sea will have a strong influence over the future of the Western Pacific from the standpoint of military strategy, including control of the important maritime route connecting East Asia and the Middle Eastern oil fields.

Moreover, with about 50% of the world's goods going through the South China Sea, this sea area has become the "maiden route" of the world's shipping route. About 90% of commercial activities must be transported at sea, of which 45% must go through the South China Sea. Regarding foreign policy, the South China Sea issue gives the United States leverage in discussions and negotiations with China. The US's support for founding principles and the American security shield give many Southeast Asian countries enough motivation to work to strengthen their bilateral ties with Washington, as the South China Sea rivalry represents the most intractable security issue in Sino-Southeast Asian relations. The US role is also seen as supportive of ASEAN's cohesion.

Regarding security, the United States has made or planned several responses to protect American interests in the region. The United States depends on free passage through the waters and airspace of the South China Sea to deploy its armed forces between the Pacific and Indian Oceans. Due to the strategic position of this sea area, the US inevitably wants to maintain its leading role and influence in the South China Sea. From President Obama to President Trump, this has been an international issue.

For China, the South China Sea has an important position because it is located between the Indian Ocean and the Pacific Ocean, which is a strategically important region, the port of mainland China to the outside world. This is a very rich area of oil and gas resources. According to estimates by The US Energy Information Administration, the South China Sea can hold 11 billion barrels (1.7 billion tonnes) of oil and 190 trillion cubic feet (5.4 trillion cubic meters) of natural gas hydrocarbon reserves (Raditio 2019, 70). The South China Sea has important economic, military, and geopolitical significance in China's maritime strategy. Half China's oil consumption is from imports, and 80-90% is imported across the South China Sea (Raditio 2019, 73).

Moreover, the South China Sea is the passage for 80% of oil imports to Japan, South Korea, and Taiwan, respectively (Rahman and Tsamenyi 2010, 317). So that the South China Sea is the shipping route for nearly all of China's oil imports, the South China Sea has become crucial for China's development. The South China Sea is considered the "throat" of the transportation system not only of China but also of the world. Militarily, it is a defensive area in China's global strategic posture. The South China Sea forms a maritime buffer for the provinces of southern China and would be a key theatre of operations in a conflict over Taiwan with the US. Any effort to blockade China in wartime would also occur in these waters (Fravel 2011, 296).

Regarding geopolitics, the South China Sea provides the shortest access to connect the Indian Ocean and the western Pacific. The strategic importance of the South China Sea for China's development propels Beijing to develop its navy southward instead of eastward. The domination in the South China Sea benefits Beijing not only in securing its development but also in consolidating its centrality in Asia (Raditio 2019, 77).

From the beginning of the XXI century, the US and China tried to compete with each other to affirm their position, role, and influence in the world. The South China Sea represents a microcosm of the growing China-US rivalry across the politics-diplomatic, economic, and military spheres, especially regarding contrasting interpretations of the rules-based order and international law (Bosbotinis 2021). The influential rivalry became more and more fierce in the first two decades of the XXI century as China increasingly expressed its ambition to turn the

South China Sea into its “home pond” and considered this sea to be on par with Taiwan, Tibet, and Xinjiang - territories that China has always considered the nation’s inseparable and in need of protection at all costs. China’s increased military-defense potential, coupled with China’s aggressive and pressuring actions in territorial disputes in the South China Sea with several Southeast Asian countries, is a concern with the US, and the conflict between the two countries in the military field is deepening.

In April 2001, a US EP-3 Orion spy plane collided with a Chinese J-8 fighter jet off the southern coast of Hainan island in China’s exclusive economic zone. In March 2009, the Pentagon accused five Chinese civilian ships of “tracking” and “obstructing” the USNS Impeccable of the US while conducting a military survey about 120 km south of Hainan island. This incident led to fierce controversy between the governments of the US and China. The former US National Intelligence Director Admiral Dennis Blair called China’s harassment of the USNS Impeccable (Graham and Tseng 2014, 49). The US maintains that the United Nations Convention on the Law of the Sea (UNCLOS) permits freedom of navigation for aircraft and ships, including military means at sea, of all countries, including the exclusive economic zones of the coastal countries.

On the contrary, China argues that UNCLOS only allows the harmless passage of other countries and allows coastal states to prohibit military activities in its exclusive economic zone. However, the profound meaning of invoking different interpretations of the article in UNCLOS is the calculations and actions of the two powers. The US relies on a lack of transparency in China’s military operations and therefore needs to deploy spy planes and ships near the coast of Hainan island, where China’s major submarine base is located. On the other hand, China argues that it has the right to protect its military activities from foreign scrutiny.

In the early XXI century, China consolidated and expanded its illegally occupied positions on the Paracel and Spratly islands archipelagos. China built the Paracel islands into a strong naval, army, air force, and submarine base; to build the shoals and reefs they occupied in the Spratlys into artificial islands and solid bases. The Beijing government has built a fleet of the world’s most technically advanced marine dredgers. Since 2002, the accretion of artificial islands in the South China Sea has increased. China has built military bases on artificial islands to serve its expansion ambitions. China’s increased military-defense potential, coupled with China’s militarization in the South China Sea and its tough claims, have intensified the confrontation between China with the US and some countries in this region. The US has responded to China’s naval build-up by deploying thirty-one of its fifty-three fast attack submarines to the Pacific. Eighteen of these subs are home-ported in Pearl Harbor; others are based in Guam. The US has also deployed three Ohio-class nuclear submarines to the Asia-Pacific Indian Ocean region. Each has been modified to carry 154 conventional Tomahawk cruise missiles. In addition, the US has begun to station the fifth-generation Raptor aircraft in Hawaii (Thayer 2010, 36).

China has consistently stated that it prefers to hold bilateral talks with each claimant and opposes “multilateralization” or “internationalization” of issues about the South China Sea, such as sovereignty disputes, sovereignty rights, and jurisdictional rights with coastal countries (including Vietnam). For the US, the policy for the South China Sea includes two elements. First, the United States takes no position on the legal merits of the competing claims to sovereignty in the South China Sea. Second, maintaining freedom of navigation is a fundamental US national

interest. The United States maintains that states may not restrict military survey operations within their Exclusive Economic Zone (EEZ) (Graham and Tsjeng 2014, 49). The US supports dispute resolution by international law and multilateral cooperation. In his speech at the June 2011 Shangri-La Dialogue meeting in Singapore, the former US Secretary of Defense R. Gates focused on America's enduring commitments to Asia. He re-stated the US position on the South China Sea, saying, "We have a national interest in freedom of navigation, in unimpeded economic development and commerce, and respect for international law" (Gates 2014). In a meeting with ASEAN leaders in early 2016 to express US concerns, US President Barak Obama said: "We discussed the need for tangible steps in the South China Sea to lower tensions, including a halt to further reclamation, new construction and militarization of disputed areas. Freedom of navigation must be upheld, and lawful commerce should not be impeded" (US Office of the Press Secretary 2016).

The South China Sea has become the focal point in the comprehensive US-China strategic rivalry and the center of the US Indo-Pacific strategy. Under President Obama, the South China Sea issue is considered and enhanced through the presence and cooperation with countries in the region. President Donald Trump's administration has adopted a more forceful and uncompromising stance toward the South China Sea dispute than President Obama's. To prevent China's ambitions in the South China Sea, on 15 May 2018, President Donald Trump approved the US Defense Authorization Act for the fiscal year 2018-2019, which identifies multiple measures to neutralize China's illegal militarization in these waters. The law specifically requires the US Department of Defense to report on China's illegal militarization of the South China Sea regularly, to use all reasonable efforts to stop China from engaging in any reclamation or reclamation activities in the region, to withdraw all weapons from the area via a suitable route within four years, and to forbid China from taking part in RIMPAC, the largest international naval exercise in the Asia-Pacific. These are measures unprecedented in the US legislative system.

Since 2017, the US military has significantly increased its operations' frequency, scope, and intensity in the South China Sea region. Since Donald Trump took office, the American military has conducted Freedom of Navigation Operations (FONOPS) 15 times in the South China Sea. In this year alone, the Pentagon has dispatched one or two destroyers to the territorial seas or the adjacent waters of China's Xisha (Paracels), Nansha (Spratlys), and Zhongsha islands (Scarborough Shoal) six times without the permission of Beijing. In addition to these so-called FONOPS, the US military's underwater forces and airpower have also frequently conducted close reconnaissance against China in the South China Sea. According to incomplete statistics, American B-52 bombers deployed in Guam flew to the Vietnamese Sea at least 16 times last year to carry out military missions, about four times the frequency compared to 2017 statistics (Shicun2019).

The FONOPs are designed to maintain freedom of movement at sea. It is commensurate with the US national interest. However, in the garb of these operations, the US' objective appears to be the freedom of navigation for its warships, intelligence, surveillance, and reconnaissance (ISR) vessels. The US Navy constantly conducts so-called "presence" patrols in the SCS. In mid-April of the same year, US Defense Secretary Ashton Carter announced that the United States and the Philippines had begun joint naval patrols. The US Navy has an average of

two or more ships patrolling the SCS. The US conducted four FONOPs between October 2015 and October 2016.

The Trump administration conducted the first freedom of navigation operation on 24 May 2017 (Anwar 2017, 47). Moreover, on 12 November 2017, the US, India, Japan, and Australia revived the Quadrilateral Security Dialogue (QUAD) to realize the Washington administration's Indo-Pacific strategy to control China's ambitions in the Belt and Road Initiative. To be ready to deal with US actions in the South China Sea, on 4 January 2019, the Chinese Central Military Commission convened a Military Work Conference in Beijing. At the meeting, Chinese President Xi Jinping declared that China must be ready to deal with acts of war. Also at the conference, Colonel Duey Hooker, Director of the China Institute of Maritime Cooperation and Security Research, suggested that the PLAN should be ready to prevent US warships from exercising freedom of navigation in the South China Sea.

The South China Sea is an especially important route for the US defense networks and security links. On the one hand, the US needs to ensure the security of regional allies, including the Philippines and Taiwan, two claimants in the South China Sea. On the other hand, in the context of China's constant military upgrades, the US is interested in securing the rules-based order in the region. In order to increase the US military presence in the South China Sea and curb China's growing influence in this area, the US has continuously expanded its military operations with countries surrounding the South China Sea, joint exercises, increasing military influence over the South China Sea region. The current joint naval exercises are mainly Cooperation Afloat Readiness and Training (CARAT), the Southeast Asia Cooperation Training (SEACAT), "Cobra Gold" and "Shoulder-to-Shoulder" (Balikatan), including the navy, army, and air force. The scale of the exercises was constantly expanding, and the exercises' content also gradually evolved from anti-terrorist drills to powerful military attacks such as amphibious landing, surprise hits, and island capture; the practice area was increasingly close to the disputed waters of the Spratly islands. In particular, in September 2019, for the first time, the US Navy and 10 ASEAN countries (including the Myanmar army, which is under US sanctions) held a joint military exercise at Sea (ASEAN - US Maritime Exercise, referred to as AUMX) with the aim "not focused or dedicated against or towards anyone else. It is to enhance the skills of ASEAN and the US working together" (Reyes 2019). These exercises have significantly increased the US military presence in Southeast Asia and the South China Sea in response to China's "rise", especially as Beijing continues to increase the militarization of the South China Sea, imposing irrational sovereignty over neighboring countries, including Vietnam. In addition, this also promotes dialogue and strengthens cooperation to address regional security challenges facing the region; the plan of action was to implement the ASEAN-US Strategic Partnership 2016-2020 (Zou 2021, 462).

On 1 June 2019, the US Department of Defense officially released its first Indo-Pacific Strategy Report. The essence of this strategy is to strengthen the United States' bilateral alliances and multilateral cooperation mechanisms in economics, security, and maritime affairs to build a collaborative network encompassing South Asia, Southeast Asia, and Northeast Asia. Regarding strategy, the United States has used the South China Sea issue as a wooing mechanism to force countries inside and outside the region to take sides with the ultimate goal of building a military alliance against China in the Indo-Pacific region. Tactically, the US has



increased its unilateral or joint power deployment operations under the Indo-Pacific Strategy framework. This practice has caused the geopolitical rivalry triggered by naval military games between China and the United States to become increasingly fierce and pose new challenges to maritime security in the region (Shicun 2019).

According to the Indo-Pacific Strategy report, the US military currently has over 2,000 aircraft, 200 warships and submarines, and 370,000 military personnel deployed in the Indo-Pacific region. The report contained a plan to purchase 110 fourth and fifth-generation fighters and 400 advanced medium-range air-to-air missiles, among other defense materials suitable for maritime tactics. Additionally, it notes plans to purchase 10 destroyers and ballistic missiles between 2020 and 2024 to improve US capabilities in anti-surface and anti-submarine warfare. The South China Sea and its surrounding areas are the geographical centers of the Indo-Pacific Strategy. The US military will inevitably accelerate and intensify its strength deployment, base construction, and forms of military operations in this region (Shicun 2019).

As a result, the simultaneous presence of the US and China in the South China Sea has greatly affected this region. In the complex, changing world and regional situation, with China growing in political position and economic and military power, the countries in the South China Sea are deeply concerned. The presence of the United States in the South China Sea will help the region maintain the status quo following the interests of many sides.

## CONCLUSION

Since the Cold War, especially in the early two decades of the XXI century, China has significantly increased and expanded its influence and position in Indo-Pacific and Southeast Asia. The rise of this powerful Asian country has strongly influenced world development, changing the global distribution of power. China "is shifting the balance of power in the Eastern Hemisphere, which will substantially concern the United States. On land and at sea, abetted by China's favorable location on the map, Beijing's influence emanates from Central Asia to the Russian Far East, and from the South China Sea to the Indian Ocean" (Kaplan 2012, 200). China's rise and growing influence have particularly interested US strategists and many other major countries. The US has always identified itself as a Pacific nation. In November 2009, Barack Obama declared himself "America's first Pacific president" and the US a "Pacific nation" (The US Office of the Press Secretary 2009). The claim that the US "is a Pacific nation rests first on geographical reality. The territorial expansion between the late eighteenth and the middle of the nineteenth centuries brought the US from its origins along the Atlantic seaboard across the North American continent to the shores of the Pacific Ocean" (Limaye 2012, 4). Therefore, the US policy towards China has gradually shifted from the "strategic partner" under Bill Clinton to the "direct competitor" in the region under George W. Bush, Barack Obama, and Donald Trump.

On the other hand, as Professor Carlyle A. Thayer (Australian Defense Academy) emphasized: "The aggressiveness and diplomatic tensions that China continues to maintain threatens to keep it diplomatically isolated and undermine the soft power it has established in recent years" (Thayer 2011). The process of power rivalry between the US and China is manifested by hard and soft power, including competition in key areas from economics, military,



and politics to culture. This competitive process has become increasingly fierce and has a far-reaching influence in each region and worldwide in the XXI century.

China's power and influence have grown dramatically in Southeast Asia, threatening US interests in this region. Therefore, the fierce rivalry for power between these countries in Southeast Asia and the South China Sea is inevitable. The South China Sea is the intersection of the interests of major powers in the world (US, Japan) and the "giants" of the continent (China, India). It is associated with countries that are speeding fast development (Vietnam, Malaysia, Indonesia, Philippines, Singapore). Whichever country controls these semi-enclosed seas will influence trade routes and a secure zone from which to launch a submarine strike, which might have an impact on the security, business, economics, and politics of East Asian nations as well as those in the Asia-Pacific. China is a rising power; therefore, if it gains control of the South China Sea, it will no longer be a continental power but also a sea power in the Indo-Pacific. For the US, this territorial water is associated with the most fundamental interests, such as regional peace and stability, the right to the traffic of military ships, and important interests in trade and investment. The Philippines and Australia are two crucial "watchtowers" in the US strategic system, and the US is particularly concerned that if China gains access to the South China Sea, this Asian power will seize the lifeline connecting the Pacific Ocean with the Indian Ocean and run the risk of destroying them. The South China Sea influence disputes between the US and China have grown even more complex, and there is a possibility that a geopolitical conflict will break out in the coming years, given China's strength and increasing assertiveness in claiming sovereignty and the US's desire to maintain its dominant position in Southeast Asia.

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# STRUCTURAL AND NON-STRUCTURAL OBSTACLES IN THE PROCESS OF RECOGNITION OF INDEPENDENCE OF KOSOVO: 2008-2021

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**Abstract:** *The process of recognition of Kosovo has continuously declined since the Declaration of Independence until 2021, the period covered in this paper. This process is characterized by external structural obstacles, as well as internal non-structural ones. Applying the content analysis method and semi-structured interviews, the paper emphasized that the main structural obstacle was the inability to accept the Ahtisaari Plan from the UN as a compromise choice. On the other hand, the non-recognition of the state of Kosovo by Serbia (supported by Russia) resulted in the division of the states into two large groups: "pro" and "contra" recognition. Meanwhile, due to these extreme divisions, a third group of states sees the recognition of Kosovo as an opportunity to solve the previous obstacles. Thus, Serbia has established clear schemes to hinder the development of the process, first by sending the case of Kosovo to the ICJ and later by presenting the Kosovo-Serbia negotiation as status negotiations. Meanwhile, the internal political instability in Kosovo and the wrong political approach towards potentially recognizing states are evident as non-structural obstacles in achieving new recognition.*

**Keywords:** *Independence; Recognition; Political Processes; Obstacles; Negotiations*

## INTRODUCTION

International recognition of states is very important, especially in their consolidation. However, this process is quite complex, as "doctrinal controversies" (Wheatley 2016) make it difficult to know when a new state has appeared in the international arena. Recent studies find that recognition has no normative content or is considered a legal tool for political choices (Worster 2009, 116). The creation of the state has continuously presented a great challenge to the international order because the ambiguous nature of the doctrine of recognition in international law has influenced the development of this academic debate (Morrison 1967, 857).

Newly created states, like Kosovo, strive to complete recognition for external political consolidation as soon as possible because the process of creating a state has always received significant opposition because it impacts the territory but can also impact the international system (Newman and Visoka 2021, 1). Several disagreements have been started when discussing the state's founding and recognition, particularly due to the "multitude of types of state creation" (Finck 2016, 52), but also because of the need to ensure recognition, which remains one of their main objectives.

It can be demonstrated that even in the case of Kosovo, which is covered in this paper and tries to address the research question of what challenges Kosovo faced during the recognition process - the recognition of independence was seen as one of the main priorities that Kosovo's foreign policy has had" (Hypothesis I), meanwhile, "recognition by most of the neighboring countries, recognition by most of the EU Member States and most of the Western countries, has already strengthened this goal" (Hypothesis II).

There has been a steady deterioration in recognition of Kosovo's independence. The states who had not yet recognized Kosovo during its development remained caught in many major conundrums or were dependent on the events that followed the Declaration of Independence, while the justifications for "legitimizing the non-recognition" varied, especially because of the sovereignty and integrity of Serbia and the precedent that could be created (Bolton and Visoka 2010).

The states that did not recognize Kosovo took advantage of this moment to start supporting the separatist movement in some countries. On the other hand, the justification for the non-recognition was precisely the fact of creating a precedent. At the same time, through them, it controls the (de)stability of those countries (Riegl and Doboš 2018, 58), as Russia had done to some regions close to it, which it would push towards recognition, using the Declaration of Kosovo's independence as a justification for its actions.

## THE RECOGNITION AS "A POLITICS" AND THEORETICAL CONFLICTS

### Constitutive Theory

Malcolm Shaw, James Crawford, etc., have paid increased attention to this topic. This theory starts from the fact that "a state becomes an international person and a subject of international law only through recognition" (Andrew 2012, 150). State recognition has political and legal meaning, with internal and external consequences (Morrison 1967, 857), while the state is and becomes an international person only and exclusively through recognition; therefore, states that intend to exist must ensure recognition (Oppenheim 1905, 109).

The constitutive theory closely links the state's recognition with its *de jure* confirmation as an international legal entity (Slomanson 2007, 76). Be that as it may, this theory is not acceptable (Shaw 2017, 206-207), but be that as it may, it pays primary attention to the act of recognition rather than the political process through which recognition is intended.

The recognition of the new state depends on other states, which determine who can be subject to this order, through individual or collective actions, as "the final legal effect" (Crawford 2006, 20). According to this theory, the existence of the state depends on its recognition that comes from the precursor state actors, which confirm the actual fulfillment of the statehood criteria, causing them to act in accordance with their political will (Högger 2015, 25), but the fulfillment of these criteria are not sufficient for the constitutive theory, which considers that only recognition perfects statehood (Grant 1999, 2), even the process is more related to other criteria than those mentioned above (Visoka 2022, 143).

Brownlie (1973) finds that a state does not even exist legally without formal recognition, saying that the personality of a state, in the sense of existence, depends on the political attitude



that other states will have towards the political entity that claims statehood, even regardless of whether the claiming state has managed to meet these criteria (pp. 89-108).

## **Declarative Theory**

The recognition of the state depends more on international relations and that the state is not a product of law but of circumstances outside it (Bokor-Szegő 1998, 268), while the recognition of a state declared as independent (according to the declarative theory) is a political act, which represents the confirmation of a new international subject (Crawford 2006, 22). This has led to a great, perhaps even outdated, debate between declarative and constitutive theory regarding its recognition and effect. This debate will be equally important because the Declaration of recognition of independence brings different legal consequences (Talmon 2004, 101).

Theories of recognition will continue to exist as attempts to frame the aspirations and expectations of states within a single model seem too ambitious, as states, like humans, act inconsistently (Schoiswohl 2004, 32), while states here are the missing main authority of the international order and the effective executors of the main subject in international law (Lauterpacht 1944, 385).

Kosovo's experience consists of the declarative and constitutive theories of recognition, where at the same time, the political leadership promotes the existence of the state of Kosovo regardless of recognition and works on the constitution of international legitimacy and membership in international society through diplomatic recognition and membership in regional and international organizations (Newman and Visoka 2018, 371).

## **THE HISTORICAL CONTEXT OF THE CREATION OF THE STATE OF KOSOVO AND IMPACT ON THE PROCESS OF RECOGNITION**

The historical dispute over the Declaration of Kosovo's independence is related to the internationalization of its problem. At the same time, the solution to the international status of Kosovo was seen as its product (Pippan and Karl 2012). This long and historical process has created a unique set of facts and relations between the two countries, making Kosovo distinct from other separatist cases (Reynolds 2008; Fierstein 2009). Thus, the problem of Kosovo is difficult to pinpoint as a case that begins with an exclusive event. However, in any case, the creation of the state of Kosovo is primarily connected with the dissolution of Yugoslavia. This process is seen as the end of its dissolution (Warbrick 2008, 675).

Thus, Kosovo is concluding a political process that began almost 20 years before it declared independence, but seen from a historical perspective, the Declaration of Independence of Kosovo came as a result of the failure to reach an agreement in the Vienna negotiation process due to the contradictory attitude of the parties (Weller 2008, 659).

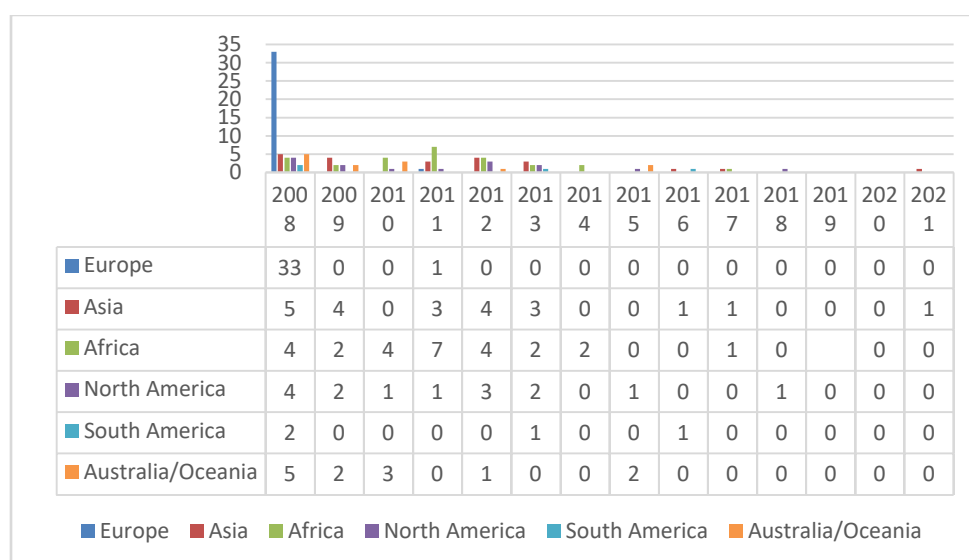
## SECURING INTERNATIONAL RECOGNITION

At the beginning of recognizing the state of Kosovo, the main political battles would take place in the legality of the Declaration of Independence, as the Serbs/Russians claimed in Resolution 1244. However, in the dangerous precedent that could be used in cases other countries tried to stop or question the legality of the Declaration of Independence; therefore, recognition, in this case, would have political effects as far as the new international order is concerned. At the same time, the confirmation of statehood would confirm the basis of secession as part of international law, says Daniel Fierstein (2009), who continues the argument: "Recognizing Kosovo's Declaration of Independence as legal would bring a significant measure of finality to a previously turbulent and uncertain situation in the Balkans" (p. 442).

The United States and most EU Member States were in favor of recognizing the state of Kosovo; for the USA, since the humanitarian intervention, the state of Kosovo is related to its national security (Murphy 2003, 387), while related with it; the EU also gave a legal opinion, where, among other things, it is said that Resolution 1244 has in its spirit the political status of Kosovo, while this resolution does not define or limit the status, not stopping it, since the claims for retention of *status quo* are a violation of this resolution itself (Reynolds 2008).

Structural and non-structural obstacles to recognizing Kosovo's independence were encountered throughout the political process until the Declaration of Independence, where local and international actors, the most important international institutions, were involved, which had positive and negative positions throughout the process. These attitudes have been carried over from one stage to the next, making the new state the arena of clashes of great powers continuously, while the recognition process is equally difficult with these differences (Rahmani 2014, 249).

**Table 1: Trend of Recognition of Kosovo Independence: 2008-2021 (Source: Ministry of Foreign Affairs of the Republic of Kosovo 2022)**



Between the marked differences between the supporters of the Kosovo state (USA, EU) and the opponents of this process (Russia, China, South Africa), a good part of the world's states would find themselves in a middle position without declared regarding their position on the state of Kosovo, waiting for its effects (Newman and Visoka 2018, 368).

Serbia has supporters in several international political structures such as the UN (Russia and China), the Council of Europe (Russia, Spain, Greece, Slovakia, Cyprus, Romania); The EU and NATO (Spain, Greece, Romania), had prevented recognition as a collective action, had also prevented membership in these organizations and many others in the following years, Serbia wanted to slow down the recognition process (Ker-Lindsay 2015, 1).

Researchers, politicians, and other political actors connect the process of recognition precisely with the persuasive ability of Kosovar diplomacy, from international support, but also from the internal dynamics of the states that could recognize the state of Kosovo. Scholars consider Kosovar diplomacy decisive in mobilizing international support for its recognition (Newman and Visoka 2018, 368).

The head of Kosovar diplomacy considers that Kosovar diplomacy has identified every potential state that can recognize the state of Kosovo, following political development within the structures of those states and seeking support from allied states with influence in those areas (Hoxhaj, personal communication 2021), but toward recognition are dependent on political developments in Kosovo and Serbia (Lama, personal communication, 2021; Hoxhaj personal communication 2021; Gashi, personal communication 2022; Ahmeti, personal communication 2022).

As a result of the application of this doctrine and intending to destabilize the region, the Serbian state, found before an act committed, although expected, expressed its incompatibility with the act of Declaration. Thus, most foreign embassies accredited in Belgrade were closed, and the protests were numerous and frequent. At the same time, the UN Security Council, in the discussion about Kosovo, in the meeting held immediately after the Declaration of Kosovo's independence, did not issue any resolution but reaffirmed the great division that it had happened among the great powers regarding the status of Kosovo (BBC 2008). It treats these actions of Serbia as a strategy for slowing down recognition: "[Serbia's] immediate political objective was to soften Serbian public opinion, gain time and slow down the process of international recognition of Kosovo" (Bebler 2015, 162).

In its recognition process, Kosovo faced again with old challenges, structural at first but also non-structural later. States worldwide, having similar cases in their territories or near them, did not rush to recognize the new state, waiting to see how things would go. Their quick ignorance allowed the opponents of the Kosovo state to react individually to them through the most unconventional forms possible (Bislimi 2020).

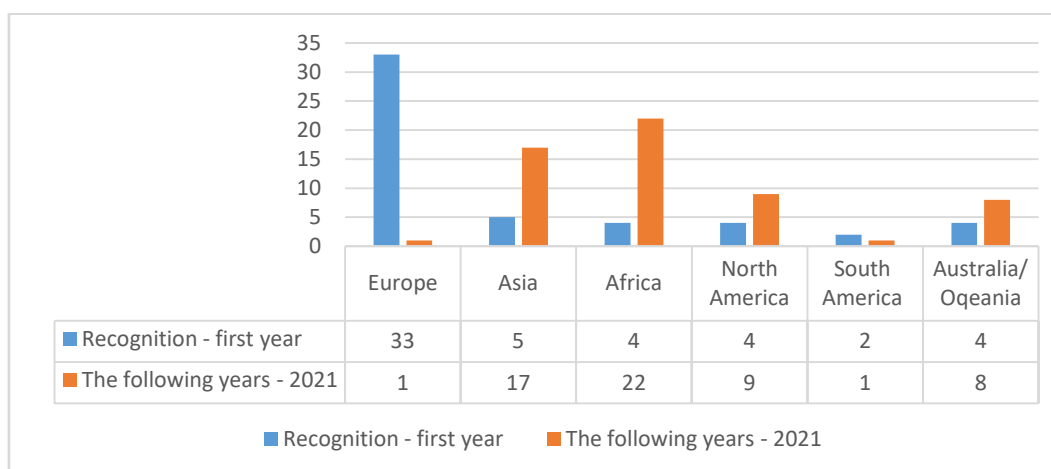
Russia has intended to use the recognition of Kosovo by Western countries to increase its advantages in the area that it considers as part of its influence, but in any case, those political entities have not had wide international recognition since states are very careful about the act of recognition, despite the fact that such entities claim legitimacy (Seymour 2017, 817).

Serbia has always intended to contextualize the recognition of Kosovo's independence, initially by sending the case of Kosovo's Declaration of Independence to the International Court

of Justice, which had effects on the strategic redefinition of Kosovo, as far as the achievements of recognition and the preservation of the legality of its announcement (Konushevci 2008).

The decision to handle Kosovo's case in the ICJ naturally had negative effects on recognition, even though Kosovo declared that this was just a futile effort and the next one by Serbia, which intended to use it to slow down recognition, or even of the blocking of Kosovo in the process of membership in international organizations (Sejdiu 2008).

**Table 2: First Recognitions and Recognitions in the Following 13 years (Source: Ministry of Foreign Affairs of the Republic of Kosovo 2022)**



It was understandable that Serbia wanted to bring the Kosovo case back into the discussion, calling it unfinished and prompting skeptical states to delay recognition, even though the ICJ decision was only advisory (Gashi 2008). The treatment of Kosovo at the ICJ was read as a diplomatic victory for Serbia over the political process of recognition of the new state. Marc Weller had this assessment, arguing that Serbia is not interested in seeing a priori the legality of the Declaration of Independence but the creation of doubts in the act of recognition and its delay (Peci 2009). As the time approached when the court would decide on the case of Kosovo, there were increased estimates that Serbia after it, regardless of the court's decision, would start recontesting the political status of Kosovo, looking for other forms or modalities for negotiation, while Kosovo will try to use the decision to start a new phase of recognition (Bislimi and Konushevci 2009). The ICJ's advisory opinion was:

more ambiguous than the parties saw it, it offered the EU an opportunity to pressure Serbia to engage in dialogue if it wanted to continue with EU integration and let the Serbian government with few alternative strategies. The advisory opinion, therefore, inadvertently paved the way for EU mediation between Serbia and Kosovo (Bieber 2015, 297)

While waiting for the decision, the beginning of technical negotiations between Kosovo and Serbia gradually appeared on the political scene as a discussion, which Serbian policy saw as necessary, but also independent of the ICJ decision. This can also be seen as a clear indication of Serbia's approach to Kosovo, particularly its recognition (Bislimi 2010).

## Political Negotiations as a Barrier to Recognition

The decision of the International Court of Justice (ICJ), despite being classified as capital, Serbia wanted to avoid the effect that its acceptance by the UN would have; therefore, it was important to find an avoidance, intensifying the calls for the start of negotiations on the things that had remained open with Kosovo, which according to their point of view are talks that were left in half, after the action of one side of Pristina (Goebel and Lowen 2010).

After receiving the ICJ's decision, Kosovo's foreign policy tried to build one more argument in the lobbying process by intensifying the lobbying of the states that had given indications that they could recognize Kosovo. Since the decision was written and did not allow ambiguity, Kosovo could secure some recognition or start a new wave of recognition (Peci 2010).

Serbia wanted to develop a new strategy for obstructing recognition; perhaps starting the negotiations would be a good approach to stop the achievement of new recognitions, as it was clear that the intensity of the recognitions had diminished. An important aspect that is very little noticed, especially in the last period (before the announcement of the ICJ decision), is that the decision, in any case, had an impact on creating the belief that the issue of Kosovo as a political status is resolved, while it is noticed that tensions had decreased, and talks as the possibility of finding political solutions for other issues, were seen as useful (Tatjana 2015, 240).

The main focus of Serbia after Kosovo had declared its independence was to identify the factors that would affect the blocking of the recognition process while aiming to open a new political battle, using the treatment of the legislation of the Declaration of Kosovo's independence in the ICJ (Bancroft 2010, 2-6).

Serbia was interested in using the dialogue to present the case of Kosovo as not closed, starting new lobbying, with the arguments that the negotiations are continuing, inviting the states not to hurry with the decision on recognition until a new epilogue that would result from the agreement between the parties (Gashi, personal communication 2022). Since then, Serbia has also started a new lobbying campaign for de-recognition, which had mainly applied very unconventional, blackmailing, and corrupting forms (Zymberaj, personal communication 2022), while it has continued these actions in the following years, identifying at least 30 states to which the request for de-recognition has been submitted (Ahmeti, personal communication 2022).

## CONCLUSION

Immediately after the Declaration of Independence, Kosovo was recognized by 53 countries in the first year. This accelerated pace of recognition was hindered only six months after gaining statehood when Serbia contested Kosovo's Declaration of independence at the ICJ. In principle, when Serbia questioned the legality of the Declaration of Independence, it intended to prolong the recognition process while being supported by Russia in world decision-making forums. The Ahtisaari Plan rejection was the second blow to the recognition process, which transformed it into a clear political and strategic plan for the states.

Afterward, the ICJ decision favoring Kosovo was considered political capital, but Kosovo had not issued an action strategy after the decision. Against this, Serbia had prepared the ground for a new wave of political talks with Kosovo, aiming to diminish the ICJ's decision.

This new situation, imposed by Serbia's demands and the reversal of the fate of recognitions from the new relationship that Kosovo will build with Serbia, affected the complete stagnation of new recognitions. From 2011 to 2021, Kosovo has continued to score some small achievements in recognition. Nevertheless, it has faced opposition, particularly regarding its participation in international organizations, which will also rely on how the Kosovo-Serbia negotiations turn out. Since numerous processes now depend on the successful conclusion of political negotiations, Kosovo is no longer in an advantageous position.



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# THE INFLUENCE OF THE DECOMMUNIZATION POLICY ON THE FORMATION OF UKRAINIAN NATIONAL IDENTITY

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**Abstract:** *The article examined the impact of the decommunization policy in Ukraine on national identity formation. The objectives of the article were to determine the main reasons and consequences of decommunization in Ukraine. A historical approach to determine the causes of decommunization and justify its necessity is applied in the article. Sociological studies and expert opinions on decommunization are analyzed. Based on synthesis, analogy, and abstraction methods, the elaborated material is summarised, and the article's conclusions are formulated. As a result, the conclusion has been drawn that decommunization could not contribute to the formation of national identity in Ukraine. The outcomes of decommunization had a positive effect only in combination with other efforts (educational process, dialogue with society, language policy). However, given Ukraine's regional characteristics, it took time to unite the population around a shared historical memory, common symbols, and traditions. The policy of decommunization primarily contributed to the strengthening of regional identity. Moreover, improving the material well-being of Ukrainians and creating favorable conditions for living and working in Ukraine will unite the residents of all regions of Ukraine. These actions will significantly enhance the effect of decommunization in forming national identity.*

**Keywords:** *Ukraine; Decommunization; National Identity; Derussification*

## INTRODUCTION

In the former Soviet Union, the term "national" was rarely used in official documents. The Soviet people were recognized as a new historical community, a supranational entity. Ukraine's presence within the Soviet Union did not facilitate the formation of a Ukrainian national identity due to the policy of the Soviet leadership. Except for a short time from 1923 to 1930, known as "Ukrainization" in Ukrainian history, the Communist Party of the Soviet Union pursued a strategy of eradicating national differences and did not value national diversity. As part of the Soviet Union, Ukraine experienced mass deportations of the local population and numerous punitive actions of the totalitarian regime. According to various estimates, the famine of 1932-33 alone cost Ukraine from three to seven million lives (Davies and Wheatcroft 2009, xiii-xiv).

Considering that, questions of national identity and filling the historical gaps are extremely topical for Ukraine. This article describes the results of decommunization in Ukraine since 2015. On this basis, it assesses the impact of decommunization on shaping the Ukrainian national identity. A historical approach to determine the causes of decommunization and justify its necessity is applied in the article. Sociological studies and expert opinions on decommunization are analyzed. Based on synthesis, analogy, and abstraction methods, the elaborated material is summarised, and the article's conclusions are formulated.

This article considers national identity according to the Western model of national identity, where nations are seen as cultural communities whose members are united, if not made homogeneous, by common historical memories, myths, symbols, and traditions (Smith 1991, 11).

## RESULTS

### Reasons for Decommunization

The past demonstrates that crucial or significant moments in a nation's history frequently serve as the impetus for processes like the decommunization of Ukraine. Nearly every cultural revolution rejects the past and starts to combat it. With the start of the French Revolution in 1789, the policy of several governments in France was given a name that sounds similar to the phrase "decommunization" - "dechristianization" (Tallett 1991). For Ukraine, the reasons that triggered the decommunization process were the occupation of Crimea by the Russian Federation and the subsequent operation to destabilize the situation in eastern Ukraine.

Russia persistently spreads the myth that Ukrainians and Russians are one nation and that Ukraine is not a state but a part of the Russian Federation (Petukhov 2008; Smolin 2014; Chesnokov 2016). The Russian Federation tries to impose this view in its state, Ukraine, and abroad. At one time, responding to this interpretation of history, the then president of Ukraine published a book with the eloquent title "Ukraine is not Russia" (Kuchma 2003). It is necessary to realize that the struggle for influence over Ukraine and its separate geographical parts is conducted by Russia, among other things, at the historical level. Ukraine is trying to defend itself. Adopting the Russian approach to history will replace the Ukrainian identity with a regional version of the Russian identity. To accept this would be to question the existence of Ukrainian statehood.

### Decommunization of 2015

In April 2015, the Verkhovna Rada of Ukraine adopted four laws called laws on decommunization. They referred to access to the archives of the repressive bodies of the communist totalitarian regime of 1917-91, condemnation of the communist and national-socialist totalitarian regimes in Ukraine, and prohibition of propaganda of their symbols, legal status, and honor of the memory of fighters for Ukrainian independence, the commemoration of the victory over nazism in the Second World War (Law of Ukraine 2015a, 2015b, 2015c, 2015d). The contents of the laws mentioned above are in some respects covered in many publications, including those listed in the introduction. This article focuses on the results of decommunization.

The most widespread results of decommunization are associated with the renaming of places and street names associated with the communist regime. The need for such a decision is vividly illustrated by the situation when streets in many Ukrainian cities were named after a Russian revolutionary who killed the family of the last Russian tsar with particular cruelty (Information Portal 2015).

Fifty-one thousand four hundred ninety-three (51,493) toponymic objects, 991 villages, 26 districts, 75 educational institutions, over 33 railway facilities, and two seaports have all had



their names changed as of April 2020. As for monuments and memorial signs, 2,409,000 were dismantled or removed from public spaces. Of these, 1,324 are monuments to Lenin (UINP 2020). Most of the names that disappeared from the map due to renaming were in honor of the October Revolution of 1917, Vladimir Lenin, Soviet figures, and members of the Communist Party. As a result of renaming, more than 300 historical names have been restored. About 70 belong to the cultural heritage of Ukraine's indigenous peoples and national communities - Crimean Tatars, Bulgarians, Greeks, and Jews. Five settlements were renamed to honor their natives, namely, soldiers who died while serving in the Antiterrorist operation zone in eastern Ukraine (Korolenko et al. 2017, 138-139).

The legislation was prescribed so that by the summer of 2016, all names associated with totalitarianism had to be changed. In the future, there were cases of renaming certain settlements in Ukraine, but they were isolated. Such a short timeframe set for renaming left no room for delaying the implementation of the legislation and prevented the process of decommunization from dragging on for many years.

Archive materials have also become a tool in search of historical truth and the formation of national identity. Therefore, access in Ukraine to the archives of the repressive organs of the communist totalitarian regime of 1917-1991 for historians, journalists, relatives of the repressed, and ordinary citizens was important to facilitate understanding of the past. Ukrainians got an opportunity to finally debunk the historical myths of the Soviet era and become more familiar with the crimes of the communist regime. In turn, this allows citizens to distance themselves from the legacy of the Soviet Union and to identify themselves with Ukraine.

Different approaches can assess the decommunization policy's overall impact on forming a common national identity. One of them is sociological research. According to Rating's study (2016):

almost half of the respondents (48 percent) support banning communist ideology in Ukraine, 36 percent are against it, and 16 percent are indifferent. 41 percent of respondents support dismantling all Lenin monuments in Ukraine. At the same time, almost half of the respondents (48 percent) are against this initiative, and 11 percent are indifferent. In the West of Ukraine, 72 percent support this idea most of all; in the Center, this index is almost twice as small and constitutes 41 percent; in the South, it is almost three times smaller - 26 percent, and in the East, it is four times smaller and constitutes 18 percent. The prohibition of communist ideology was most supported by the advocates of nationalist parties - over 80 percent. The greatest number of opponents of this idea was among supporters of pro-Russian parties - 70 percent. The same is the situation of support for the dismantling of Lenin's monuments.

The renaming of Soviet cities and streets in Ukraine:

was rather unsupported by 57 percent. At the same time, assuming that renaming can occur selectively, the attitude to the initiative has significantly softened. The number of supporters exceeds the number of opponents (49 percent vs. 44 percent). Renaming is perceived most

positively in the West of Ukraine while predominantly negatively in the East and South. At the same time, the higher the level of education of respondents, the higher the support for renaming Soviet names of cities and streets. Among residents of villages, the idea of renaming has more support than among residents of cities. This can be explained by the fact that the Ukrainian peasantry was a victim of the Holodomor and collectivization (the creation of large collective farms and the destruction of private property along with its owners). Thus, the historical memory of these crimes of the Soviet authorities determines the support of the decommunization policy among the inhabitants of rural areas (Rating 2016).

The figure of Stepan Bandera - the leader of Ukrainian nationalists at the beginning of the XX century - was viewed as:

positively by 35 percent of respondents and negatively by 46 percent. The positive attitude towards Bandera increased in comparison with the indicators of 2012 (22 percent). The positive assessment of the Russian Tsar Peter the Great was equal to 50 percent. The positive attitude to Stalin and Lenin was 22 and 25 percent, respectively, cannot but surprise and convince once again of the correctness of the decisions on decommunization initiation in 2015. In the West, there is a positive attitude toward Ukrainian figures, while in the East, there is a positive attitude toward Tsar Peter, Lenin, and Stalin (Rating 2016).

In general, younger respondents were more supportive of decommunization initiatives. The higher the respondents' education level, the more pronounced their positive attitude toward Ukrainian figures. The same attitude is observed among those living in the village. The lower the respondents' education level, the more pronounced their positive attitude toward Lenin and Stalin.

Another sociological survey was conducted four years later. At the same time, support for the decommunization policy was even lower in some aspects than in 2016. According to the study:

32 percent of Ukrainians approve of the decision to ban communist symbols. Almost the same number of citizens share a negative attitude toward this decision - 34 percent. About a quarter of citizens are indifferent. The share of positive attitudes towards this decision is slightly larger in the Western (45 percent) and Central (33 percent) regions compared to the South and East - 22 percent and 24 percent, respectively. Notable, about a quarter of citizens in all regions are indifferent to this issue. As for the respondents' age, those over 60 have a less positive attitude toward the ban on communist symbols. A sizable portion of the younger respondents (under 40) do not care whether communist symbols are allowed to be displayed. 30 percent of Ukrainians support renaming

their cities, villages, and streets named after Soviet leaders, while 44 percent feel negative about it, and about 20 percent are indifferent. Positive attitudes towards renaming toponyms prevail only in the Western region (44 percent for and 30 percent against). In the East and South, about half of the citizens have a negative attitude toward this idea. Trends in the age distribution are similar to those toward the ban of communist symbols: older people (47 percent for the 60-69 age group and 56 percent for people over 70) feel more negatively about renaming the toponyms. In contrast, young people are more indifferent (DIF 2020).

Thus, the results of sociological research show significant differences in attitudes towards communization in different regions of Ukraine. Based on this, we can conclude that decommunization can hardly be a factor contributing to forming a Ukrainian identity. It rather strengthens regional identity. At the same time, the fact that young respondents are more supportive of decommunization initiatives indicates that the positive impact of decommunization on forming a Ukrainian identity will probably increase in the future.

An expert assessment is one method of assessing the impact of the decommunization policy on shaping a common national identity. As part of a special Razumkov Center project (2017):

69 percent of experts believe implementing the decommunization policy positively impacts forming of a common national identity. Almost 90 percent of surveyed experts note that the formation of a common national identity is facilitated by the recognition of the Holodomor of 1932-1933 as the genocide of the Ukrainian people, 82 percent - by condemnation of the Nazi totalitarian regime, and 74 percent by condemnation of the communist totalitarian regime. Honoring the memory of fighters for Ukrainian independence in the 20th century would have a positive influence on the opinion of 64 percent of experts (p. 84).

As we can see, experts are more positive about the influence of the decommunization policy on forming a common national identity. Such a discrepancy in experts' assessments and sociological research data can be explained by the fact that representatives of different political forces were not proportionally represented among the experts. At the same time, as the results of sociological studies testify, the higher the population's education level, the more they support the decommunization policy. It is simply impossible to have a low level of education for the experts. Consequently, they likely identified their personal attitude to the process of decommunization with the attitude of the entire population.

The processes initiated by the decommunization laws of 2015 were continued in 2018 (Law of Ukraine 2018). The law added persons who participated in all forms of armed struggle for the independence of Ukraine in the XX century to the list of participants in military actions. This development came about because everyone who took part in the military struggle for Ukraine's independence in the XX century was acknowledged for their contribution to the formation of the Ukrainian state. This decision has a strong moral component in addition to

some material benefits for these people (as few remain alive). This decision is important to their relatives and to all who pay tribute to these people. Their lives and ideas unite the citizens of Ukraine (especially in the western regions). In this case, we can speak of a positive impact on strengthening the regional Ukrainian identity.

## CONCLUSION

Decommunization on its own was not capable of solving the task of forming a national identity. The results of decommunization can only have a positive effect when combined with other measures (educational process, dialogue with society, and language policy). However, given Ukraine's historical past and regional specifics, it is extremely difficult to unite the population around a common historical memory, common symbols, and traditions.

The desire to live in Ukraine is the only thing that can truly bring together residents of all regions of Ukraine. Creating good living and working conditions in Ukraine will greatly enhance the effect of decommunization.

In the Legatum Prosperity Index published in 2020, Ukraine is ranked 92<sup>nd</sup> out of 167 nations in the world's well-being rankings. This is the worst indicator among the countries of Eastern Europe (Legatum Institute 2020). In this context, we should mention the story of the referendum in Ukraine in 1991. The Ukrainian Referendum of 1991 on the proclamation of Ukraine's independence was held on 1 December 1991. The question of confirmation of the Act of Declaration of Independence of Ukraine of 24 August 1991 was submitted to the referendum. 90.32 percent of voters supported independence. Results in the Crimea (54.19%), Donetsk (83.9%), and Luhansk (83.86%) as well as in Nikolaev region (89.45%), Odesa (85.38%), Kharkiv (75.63%), and Kherson (90.13%) regions - where parties and representatives with pro-Russian views typically received high support during elections - are quite revealing (CDAVO 2019). Such a sharp turn in public opinion can be explained by two reasons (no serious sociological studies were conducted in 1991). The first reason was a political attempt to preserve the USSR. The second reason, in our opinion, was the expectation of a higher standard of living in independent Ukraine. An agitation campaign preceded the referendum. One of the more powerful arguments that significantly impacted people's opinions (the author of the article remembers these events well) were the numbers that showed Ukraine's powerful economic role in the Soviet Union and envisioned Ukraine prospering outside of the USSR. If these expectations were reinforced by reality, events in Crimea and eastern Ukraine in 2014 could have followed a different scenario. In the end, the gaps in the formation of a national identity were exploited by the Russian Federation. Furthermore, today financial well-being occupies one of the central places in the value orientations of Ukrainians. According to the results of one research in Ukraine, among the "most important life values, respondents most often named health (58 percent), a happy family life (41 percent), and a financially secure life (absence of financial difficulties) (39 percent)" (The Razumkov Centre 2017, 34). If we remember that health and happy family life in the real world are often closely linked, the material factor's importance increases even more for Ukrainian citizens. Relying on the results of such studies, experts believe that among the factors that can help to unite Ukrainians, overcoming the existing socio-economic problems, the improvement of well-being is the most important indicator and is equal to 94 percent (The Razumkov Centre

2017, 84). Decommunization contributed to the fact that a certain number of citizens became interested in the local history of their area. Undoubtedly, this contributed positively to their understanding of their regional identity. There was a major moral component to the decommunization strategy as well. It finally paid respect to those who had battled against communist rule and had been tortured and killed by it. The Russian military invasion in February 2022 launched a process of “derussification” in Ukraine. The scale and impact of derussification on Ukrainian society can only be assessed over time. At the same time, it is already clear that the very fact of the Russian military invasion and its consequences have become a powerful factor in strengthening the Ukrainian national identity. These processes will most certainly be the subject of further research among Ukrainian and foreign scholars.

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# JAPANESE-RUSSIAN-UKRAINIAN GEOPOLITICAL TRIANGLE: MUTUAL INFLUENCES OF THE PARTIES

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**Abstract:** *The study revealed mutual influences within the conditional triangle "Japan-Russia-Ukraine" that have consequences for the security situation on a global scale. It clarifies how security and territorial integrity (of Ukraine and Japan) affected the content and nature of Japanese-Ukrainian, Japanese-Russian, and Ukrainian-Russian relations. The study aimed to determine how the positions of any two states from the modeled conditional triangle concerning a third state influence the content and nature of their relations. The research methodology is based on institutional analysis, with the help of which the decisions and positions of the state institutions of Japan, Russia, and Ukraine, as well as their consequences for security at the regional and global levels, are studied. It is proved that the Ukrainian issue affects the content and nature of Japanese-Russian relations with upward dynamics throughout the entire period of the Russian aggression against Ukraine (2014-2023). The analysis of the processes in the triangle "Japan-Russia-Ukraine" demonstrated that the security of Europe and Asia might no longer be separated as autonomous processes.*

**Keywords:** *Japan; Ukraine; Russia; Conflict Escalation; War; Global Security; Sanctions*

## INTRODUCTION

One of the topical issues of international relations, which is currently given a new interpretation, is the content and nature of Japanese-Russian bilateral relations and the factors that affect them. This is conditioned by their rapid change under the influence of new global security challenges, the situation in third countries, the strengthening of the authoritarian component in international politics, etc.

Japanese-Russian relations did not exhibit significant dynamics for a long time; they slowly evolved out of mutual interest: Japan sought to sign a peace treaty and return to the Northern Territories, while Russia sought economic cooperation and required Japanese investments and technologies. However, Russia's change in foreign policy and security strategies in the direction of open aggression and the increased security threats in the Indo-Pacific region due to the actions of China and North Korea led to a change in Japanese foreign and security policy. As a result of the mentioned processes, Japanese-Russian relations significantly deteriorated. Many problems became actualized due to the different positions of Russia and Japan concerning third countries, along with the appearance of problems that go beyond narrowly bilateral relations but affect them due to the global interdependence of modern states.

Among the problems that have had the greatest impact on the rapid deterioration of Japanese-Russian relations are the issues of territorial integrity and sovereignty of Ukraine. Even after the annexation of Crimea, when Japan joined the anti-Russian sanctions (April 2014),

Japanese-Russian relations worsened. One indication of this was the Japanese government's decision to cancel Vladimir Putin's official visit to Japan in October 2014, scheduled before the annexation. Although interstate cooperation was not stopped, Japan's solidarity with the collective West in assessing Russia's aggressive policy inconsistent with international law affected Japanese-Russian relations. Russia's full-scale invasion of Ukraine in 2022 quickly brought Japanese-Russian relations into a phase of upward escalation of the conflict.

According to our research hypothesis, the mentioned processes allow us to discuss the conditional triangle "Japan-Russia-Ukraine". The relationships between any two-state parties have certain consequences for a third party. First, the Ukrainian factor caused a significant deterioration in Japanese-Russian relations. The analysis of mutual influences with the participation of the mentioned states needs to be studied, given the novelty of the manifestation of mutual influences in such a configuration of actors in international politics. Therefore, the research aims to confirm/refute the author's working hypothesis about the presence of mutual influences within the conditional triangle "Japan-Russia-Ukraine" and to find out how such mutual influences affect the security situation on a regional and global scale.

The difficulty of researching the topic of mutual influences between Japan, Russia, and Ukraine is that the problem, although it started in 2014, gained momentum in 2022. Therefore, it has practically not received scientific understanding. The three states mentioned above were not studied precisely in the context of identifying mutual influences. The few existing studies analyzed Japan's reaction to the events in Ukraine since 2014 and clarified the influence of the "Ukrainian factor" on Japanese-Russian relations (Lysak and Ivanets 2015; Nelidov 2022; Panov et al. 2019; Udovik 2015). Thus, the source base of this research is primarily official statements and documents of state institutions of Japan, Ukraine, and Russia. They made it possible to reveal the mutual influences of states occurring in the conditional triangle "Japan-Russia-Ukraine" that we modeled.

The research methodology is based on institutional analysis. The study is done on the complex actions, decisions, and positions of the political institutions in Japan, Russia, and Ukraine. This enables us to illustrate how the third state party in the conditional triangle, "Japan-Russia-Ukraine", is impacted by issues with bilateral relations (Japanese-Russian, Japanese-Ukrainian, and Russian-Ukrainian).

### **FORMATION OF A JAPANESE-RUSSIAN-UKRAINIAN TRIANGLE AS A CONSEQUENCE OF ANNEXATION OF CRIMEA**

The common enemy unites Japan and Ukraine. Formally, Japan is also at war with Russia because a peace treaty was never concluded after the end of the Second World War. In 2022, Japan in the Diplomatic Bluebook 2022 called its Northern Territories (Habomai, Shikotan, Kunashiri, and Etorofuislands) "illegally occupied by Russia" (Ministry for Foreign Affairs of Japan 2022). The common enemy brought two geographically distant states very close.

The value of Japan's support for Ukraine after the annexation of Crimea is very important because the government of S. Abe at that time aimed to achieve a "historic breakthrough in relations with Russia" (Udovik 2016, 150). This is evidenced by the fact that S. Abe met with V. Putin much more often than with any other foreign leader (27 times). The reason for this was the

hope that the issue of signing a peace treaty and returning the disputed territories would move forward. Obviously, under such circumstances, Japan was faced with a choice: 1) to continue to cooperate with Russia in order to realize its national interest; 2) to openly oppose the aggressor state and condemn its actions in Ukraine. When choosing a model of behavior, Japan placed the values (democratic) above all and not the illusory prospect of returning territories from Russia.

After the USA and the EU introduced the first sanctions against Russia in response to the annexation of the Ukrainian Crimea, Japan joined this process almost immediately. Therefore, in 2014, Japan: suspended consultations on simplifying the visa regime for citizens of Russia, postponed the beginning of negotiations on a new investment agreement, an agreement on cooperation in the field of peaceful space exploration, an agreement on dangerous military activities (Ministry for Foreign Affairs of Japan 2014b); introduced personal sanctions against Russian citizens who contributed to the violation of the sovereignty and territorial integrity of Ukraine (Ministry for Foreign Affairs of Japan 2014c); froze the assets in Japan of those individuals and companies that were involved in the annexation of Crimea and destabilization of the situation in the eastern territories of Ukraine (Ministry for Foreign Affairs of Japan 2014a); introduced sanctions regarding the export of weapons and securities of several Russian banks, etc. Generally, the list of Japan's sanctions was very extensive. At the same time, in the Russian scientific discourse, the sanctions of 2014 are called "symbolic" (Nelidov 2022, 110; Panov et al. 2019, 5), which supposedly allowed Russia not to be in international isolation.

In addition to the sanction, Japan's position on supporting Ukraine was confirmed by the cancellation of V. Putin's official visit to Japan scheduled for the end of 2014, the official visit of Japanese Prime Minister S. Abe to Ukraine (June 2015), and the official visit of Ukrainian President P. Poroshenko to Japan (April 2016).

We consider that the events of 2014, related to Russia's criminal actions in the territory of Ukraine, became a turning point that united Japan and Ukraine in opposing Russia as an aggressor state. Under the conditions of the beginning of Russian aggression against Ukraine, Japan began to assert itself more and more active on the international stage. However, given the possibility of signing a peace treaty with Russia and receiving the Northern Territories back, this was detrimental to its interests.

### **JAPAN'S POLICY TOWARDS RUSSIA IN RESPONSE TO THE FULL-SCALE INVASION OF UKRAINE**

Immediately after Russia recognized the self-proclaimed Donetsk and Luhansk People's Republics on 21 February 2022, even before Russia's full-scale invasion of Ukraine, Japan reacted with anti-Russian sanctions. Since 22 February 2022, the circulation of Russian government bonds has been banned, and a plan to freeze the assets of several influential Russian citizens has been announced. Japan characterized Russia's actions as violating Ukraine's sovereignty and international law. The introduction of sanctions was a response to Russia's recognition of the self-proclaimed Donetsk and Luhansk People's Republics.

Japan reacted sharply to the Russian invasion of Ukraine. On 24 February 2022, F. Kishida stated that this invasion undermined the foundations of the international order, which is based

on the non-recognition of a unilateral change of the status quo by force. The subsequently published Diplomatic Bluebook (2022) stated:

Russia's aggression against Ukraine is an outright challenge to the existing international order and imposed a great impact across the world. This aggression is a unilateral attempt to change the status quo by force and is an outrageous act that shakes the very foundation of the international order. It is a clear violation of international law and totally unacceptable. Japan strongly condemns these actions (Ministry for Foreign Affairs of Japan 2022).

Japan believes the war in Ukraine is changing the international order, and Russia is the subject of international politics destroying the liberal-democratic order and values. Official Tokyo has clearly announced the rejection of the status of a passive observer in these processes, which are of a global nature.

After the full-scale invasion of Russia into Ukraine, Japanese businesses, despite financial losses, began to withdraw from the market of the aggressor state and put Russian assets up for sale. Due to their strong dependence on Russian consumers, the companies that found it difficult to exit the Russian market quickly stopped investments and advertising. Japan implemented a wide range of economic measures concerning Russia, for example:

1. Russia's "most favored nation" trade status was canceled;
2. the import of equipment, certain types of wood, vodka, gold, etc., from Russia was prohibited;
3. the export of luxury items to Russia was prohibited;
4. sanctions were introduced on the export to Russian military organizations of controlled goods from the internationally agreed list, other dual-purpose goods;
5. gradual cessation and subsequent complete refusal of imports of Russian coal and oil (Government of Japan 2022).

Japan banned business contacts with more than 50 military organizations and enterprises of Russia (and Belarus), including aircraft and ship manufacturers. Efforts were made to prevent Russia from circumventing financial sanctions using digital assets (crypto-assets) through cryptocurrency exchanges.

In a speech before the Japanese Parliament, the President of Ukraine, V. Zelenskyy, asked for a full trade embargo against Russia (President of Ukraine 2022b). Japan did not introduce that embargo, but the number of various sectoral sanctions is significant. It is noteworthy that the mentioned speech by V. Zelenskyy was the first speech by a foreign leader before the Parliament in the history of Japan. This speech emphasized the primacy of Japan in Asia in the issue of pressure on Russia to restore peace. Among the Asian states, Ukraine receives support from a few subjects. Noticeably, many Asian states are still motivated to maintain contact with Russia, which causes them to adopt a neutral rather than anti-Ukrainian position. This further strengthens Ukraine's high assessment of Japan's position on ensuring peace on a global scale.

Following its G7 partners, Japan stopped using Russian oil in 2022, and its imports will eventually stop altogether. This is not an easy decision for Japan due to its strong dependence

on energy imports from Russia. In 2021, Russia supplied about 4% of oil and 9% of gas. However, alternative sources of supply from the Middle East (Saudi Arabia, Abu Dhabi, Kuwait) have been found. As of 5 December 2022, Japan introduced an upper price limit for Russian crude oil, except for oil imported from the Sakhalin-2 plant (given Japan's energy security issues). The Japanese authorities made this decision after the agreement between the G7 countries and Australia to limit the price of Russian crude oil to 60 US dollars per barrel as part of the latest sanctions against Russia caused by the aggression against Ukraine.

Japan also banned the import of Russian coal. In 2021, 13% of these imports came from Russia. Japan was the world's third-largest importer of Russian coal after India and China. However, as with oil, this situation is solved by alternative suppliers (Australia, Indonesia, Vietnam).

If we group the sanctions applied by Japan against Russia, these will include: 1) Japan's support for measures aimed at preventing the financing of Russia by leading multilateral financial institutions (IMF, World Bank, European Bank for Reconstruction and Development, etc.); 2) responding to Russia's evasion of sanctions, including with the help of digital assets; 3) restrictions on operations with the Central Bank of the Russian Federation; 4) freezing the assets of a number of large Russian banks and their subsidiaries in Japan due to their close relationship with the Russian government; 5) Japan's joining the measures aimed at isolating Russia from the international financial system and world economy by disconnecting certain Russian banks from the SWIFT system; 6) a ban on the issuance and transactions with new Russian government debt bonds on the primary and secondary markets of Japan; 7) prohibition of new investments in Russia; 8) prohibition of providing certain types of services to Russia, in particular, trust and accounting services, etc.

Also, as of 1 March 2022, Japan strengthened personal sanctions against high-ranking Russian officials, the military, oligarchs, members of their families and close circles, etc. Japan's personal sanctions concern, for example, V. Putin, D. Medvedev, S. Lavrov, S. Shoigu, V. Gerasimov, N. Patrushev, D. Peskov, R. Kadyrov, S. Kiriyyenko, deputies of the State Duma of Russia, and others. The assets of the mentioned and many other Russians in the territory of Japan are frozen; conducting any financial transactions with them is prohibited. Japan joined the Multilateral Russian Oligarch Task Force to search for and seize the assets of Russian elites and oligarchs and fictitious persons they used (US Department of Treasury 2022). Also, by the decision of the Japanese government, eight middle-ranking diplomats of the Russian embassy in Tokyo and representatives of the trade mission were expelled from the country on suspicion of espionage (April 2022).

In the wake of nuclear blackmail in September 2022, the Japanese government expressed concern over President V. Putin's nuclear rhetoric due to the possibility of using nuclear weapons during the invasion of Ukraine. As the only country in the world that suffered nuclear attacks, Japan demanded that Russia not use nuclear weapons.

In 2022, at the beginning of 2023, Japan was not part of Ukraine's main group of allies, including states with significant military potential and those ready to make political and legal commitments. At the same time, Japan was in a wider group of international partners that supported a set of non-military guarantees based on sanctions and provided humanitarian, financial, and other assistance. Simultaneously, we assume that Japan's security and defense



strategies change at the end of 2022 could be the first step towards a potential change, like support for Ukraine in the fight against Russian aggression.

The Russian invasion of Ukraine accelerated systemic changes in Japan. We consider Russia's aggression against Ukraine the driving factor for changes in foreign security, etc. Japanese politics. The government of F. Kishida observed how the NATO alliance supported Ukraine, which demonstrated a strong will to fight. The conclusion was drawn from this: if Japan increases its attention to security and defense issues, the United States and other partner states will be more willing to help when needed. The fact that Japan will be ready to defend itself is an important factor in maintaining the steadfast confidence of the allies.

### **RUSSIA'S POLICY TOWARDS JAPAN IN RESPONSE TO THE PRO-UKRAINIAN POSITION**

Russia carefully monitors all of Japan's steps to support Ukraine, and they increase the tension in relations more and more. On 21 March 2022, the Ministry of Foreign Affairs of Russia stated that given the "obvious unfriendly nature of the unilateral restrictions imposed by Japan on Russia, a number of measures are being taken in connection with the situation in Ukraine" (Ministry of Foreign Affairs of the Russian Federation 2022d). This relates to Russia's withdrawal from negotiations on a peace treaty with Japan, the suspension of Japanese citizens' ability to travel without a visa based on previously acknowledged agreements on visa-free exchanges, Russia's withdrawal from talks with Japan for cooperative commercial ventures in the southern Kurils; Russia is preventing Japan from maintaining its partnership with the Organization of the Black Sea Economic Cooperation for sectoral discussion.

Due to Tokyo's firm position against Russian military actions in Ukraine, Moscow withdrew from negotiations to establish an official peace treaty on 22 March 2022, bringing harsh criticism from Tokyo. In addition to failing to deter Japan, Russia's decision to leave the negotiations further increased the anti-Russian sentiment and the determination to carry out the sanctions program.

Since April 2022, the Russian government has been drawing up a list of "unfriendly" states, which includes more than 50 states and territories (Government of the Russian Federation 2022). Japan was one of the first to be classified as "unfriendly". Therefore, counter-sanctions and restrictions were introduced by Russia. In particular, in May 2022, a decision was made to indefinitely ban 63 Japanese citizens from entering Russia, including the Prime Minister, the heads of both houses of the Japanese Parliament, the Chief Cabinet Secretary, most of the ministers, representatives of institutions dealing with issues of the return of the Northern Territories and national security, heads and leading columnists of popular Japanese media, etc. (Ministry of Foreign Affairs of the Russian Federation 2022d). In July 2022, sanctions were extended to 384 members of the lower house of the Japanese Parliament. In the corresponding statement of the Ministry of Foreign Affairs of Russia, it is emphasized that the sanctions concern Japanese parliamentarians who "having taken an unfriendly anti-Russian position, make, in particular, baseless accusations against our country in the context of the special military operation in Ukraine" (Ministry of Foreign Affairs of the Russian Federation 2022c).



In response to the expulsion of its diplomats from Japan in April 2022, Russia announced similar procedures against eight Japanese diplomats. This received the following reasoning:

With the beginning of the special military operation in Ukraine (...) official Tokyo has taken an openly hostile anti-Russian course. Actively involved in a fierce campaign to spread slander against our country, directed by the West, the government of F. Kishida has resorted to steps unprecedented for modern Russian-Japanese relations, destroying the positives of mutually beneficial cooperation accumulated over many years. Despite common sense, Japan has openly taken the position of the full support of neo-Nazi formations operating in the territory of Ukraine, providing political, economic, and military assistance to the regime in Kyiv. This is accompanied by the incitement of Russophobic hysteria in Japanese society, creating serious obstacles for the normal functioning of Russian foreign institutions, which violates the Vienna Convention on Diplomatic Relations of 1961. The apotheosis of this line was the expulsion of eight Russian diplomats from Japan. In connection with the above, guided by the principle of reciprocity, the Russian side demanded that eight Japanese diplomatic staff members leave our country by May 10, 2022. The full responsibility for this development lies solely with the Japanese government, which has decided to abandon friendly, constructive relations with Russia (Ministry of Foreign Affairs of the Russian Federation 2022a).

Contrary to the Vienna Convention on Diplomatic Relations, Russia applied illegal pressure on Japanese diplomats. Specifically, in September 2022, the consul of the Consulate General of Japan in Vladivostok, M. Tatsunori, experienced such pressure. He was questioned roughly and did not have a lawyer. He was accused of receiving information with limited access, particularly about the impact of Western sanctions on Russia's Primorsky Krai. The consul was declared *persona non grata* and was required to leave the territory of Russia within 48 hours (Ministry of Foreign Affairs of the Russian Federation 2022b). Russia accused the Japanese diplomat of espionage. We see this as Russia's mirror response to accusing its diplomats of espionage with subsequent expulsion from the country. Russia exerted undue pressure on the Japanese consul because he took a critical position towards the Asian countries that did not condemn Russia for the war in Ukraine. Russia purposefully chose the annexed islands and the waters of the Sea of Japan in 2022 to conduct various independent and joint air, ground, and naval exercises with China. In 2022, Russia increased its military presence near the borders of Japan, for instance, groups in the Japanese Northern Territories.

We were interested to learn how Russian science deals with the problem of the triangle "Japan-Russia-Ukraine". According to the scientists' estimates of the Center for Japanese Studies of the Institute of Oriental Studies of the Russian Academy of Sciences, "the Ukrainian crisis, which entered an active phase in February 2022", resulted in the collapse of Russia's relations with Japan (Nelidov 2022, 108). In Russian diplomatic and scientific discourses, Japan's position in the international arena is usually highly dependent on the US. The most important factor

determining Japan's position in Ukraine is Japanese fears that China may take advantage of the precedent established by Russia (regarding Taiwan).

### **POSITION OF UKRAINE CONCERNING THE PROBLEMS OF JAPANESE-RUSSIAN RELATIONSHIPS**

The Ukrainian Parliament appealed to the international community regarding Japan's Northern Territories to enable contractual and legal formalization of their status (Verkhovna Rada of Ukraine 2022). The goal was to attract the international community's attention to the demarcation of sovereign states' borders and respect for territorial integrity. The appeal of the Ukrainian Parliament is aimed at preventing the tolerance of issues related to the occupation of any territories, as well as drawing the attention of the world community to the need to support the sovereign territories of Japan (the Northern Territories). A decree of the President of Ukraine was also signed, by which the Northern Territories of Japan were recognized as occupied by Russia (President of Ukraine 2022a). In addition, Ukraine confirmed its respect for Japan's sovereignty and territorial integrity, including its Northern Territories, and called on other states to make similar decisions.

It should be noted that the appeals mentioned above of the Ukrainian Parliament to the world community and the decree of the President of Ukraine were positively assessed by both the Japanese authorities and the public. We are unaware of any state's chief of state or Parliament articulating the difficulty of restoring Japan's Northern Territories in such a clear manner. This is another example of how a common enemy, with whom there is already a long history of hatred and enmity, albeit at times dressed up as cooperation, may bring countries together.

### **CONCLUSION**

The analysis confirmed the authors' hypothesis about the configuration of relations in the format of the conditional triangle "Japan-Russia-Ukraine", where the relationships of any two-state parties have certain consequences and determine the actions of a third state party in response. The indirect influence of Ukraine on the content and nature of Japanese-Russian relations has been on the rise since 2014. Despite the national interest of Japan to cooperate with Russia for the sake of signing a peace treaty and returning the Northern Territories, the violation of the sovereignty and territorial integrity of Ukraine was the reason for Japan's change of priorities in the direction of supporting democratic values, struggling for peace and global security.

One of the consequences of Russian policy regarding the temporarily occupied territories of Ukraine and the subsequent full-scale invasion of Ukraine was the rapid escalation of tension in relations between Japan and Russia. Since the end of the Second World War, no other issue has brought such tension into Japanese-Russian relations as the Ukrainian issue. This broad issue goes beyond Ukraine and concerns any encroachments on sovereignty and territorial integrity (such as the Northern Territories of Japan).

The Russian aggression against Ukraine had many consequences for Japan: rapid activation in the international arena; revision of the security and defense policy; escalation of tension in relations with Russia (refusal to conduct a dialogue regarding the peace treaty and disputed territories); deterioration of Japan's security environment due to Russia's active military exercises near the Japanese borders, on disputed islands.

Japan's support for Ukraine had the following consequences for Russia: the introduction of sanctions that affected all areas of Russian life; socio-economic losses due to the exit of Japanese business from the Russian market; loss of Japan as a market for the sale of energy sources; curtailment of various projects, mainly in the Far East region; Japan's humanitarian, technical and other support for Ukraine to fight against Russia, etc.

Ukraine's support for Japan became a tool to activate the international community concerning the return to Japan of the islands annexed by Russia. The situation in Ukraine gave Japan an impetus to become more active in the international arena to review its security and defense strategies. Due to the Russian-Ukrainian war, Japan is overcoming the stereotype that its foreign policy is allegedly not independent and is completely aligned with the US.

The main methods of pressure by the state parties of the triangle were:

- The methods of Japan's pressure on Russia to support Ukraine were primarily: actions aimed at isolating Russia from the international financial system and the world economy; sectoral and personal sanctions; expulsion from the country of diplomats suspected of espionage; curtailment of cooperation in most spheres, especially economic, etc.
- Russia's methods of pressuring Japan for its pro-Ukrainian position are: withdrawing from peace treaty negotiations; assigning Japan to unfriendly states; personal sanctions; expulsion of diplomats and undue pressure on them; requirement to pay for energy resources exclusively in Russian roubles; conducting various military exercises near the borders of Japan, etc.
- The method of Ukraine's pressure on Russia to support Japan is determined to be the activation of the international community for the return of the Northern Territories to Japan.

The Russian aggression against Ukraine is perceived by Japan not only as a threat to security in Europe. Japan believes that the same aggression from Russia (or China, North Korea) may be repeated in East Asia in the medium term. Japan, therefore, believes that Europe's and Asia's security cannot be maintained as separate, independent processes. This strengthens the connections and dependencies among the three countries - Japan, Russia, and Ukraine.

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# RULES-BASED INTERNATIONAL ORDER AND US INDO-PACIFIC STRATEGY: WHAT DOES IT MEAN FOR CHINA'S BRI?

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**Abstract:** *The third decade of the 21st century has witnessed more tensions, instabilities, and new alliances in the Indo-Pacific/Asia-Pacific region due to intensifying rivalry and strategic competition between the US Indo-Pacific Strategy (IPS) and China's Belt and Road Initiative (BRI), two grand strategies of the US and China respectively. This article aims to assess the Rules-Based International Order (RBIO) and comprehend Biden's IPS, particularly exploring how the Indo-Pacific Economic Framework (IPEF) may impact China's BRI. This paper argues that RBIO is debatable and not universal. It is also argued that while the IPEF unveiled by President Biden represents a strategically important step forward, a long-term US genuine commitment to its implementation to counter China's BRI is essential. The methodology of this research is primarily based on secondary literature and official documents. This study concludes that although China is reluctant to pay too much attention to the US IPEF in its official statements, China is concerned about this economic initiative. The paper also concludes that because of the intense US-China rivalry, new alliances will emerge in the region leading to a new cold war or new world order.*

**Keywords:** *US-China Relations; Belt and Road Initiative; Indo-Pacific Strategy; Rules-Based International Order; IPEF*

## INTRODUCTION

To counter China's BRI, the US launched the Indo-Pacific Strategy (IPS). The US and its allies are promoting a rules-based international order through IPS. A new dimension of IPS was observed when the Indo-Pacific Economic Framework (IPEF) was established to enhance economic cooperation among the Indo-Pacific states. After holding talks with Japanese Prime Minister Kishida Fumio in May 2022, President Joe Biden officially launched the Indo-Pacific Economic Framework for Prosperity (IPEF) (Radio Free Asia 2022). This US-led regional economic initiative, according to a statement released by the White House (White House 2022a), includes a dozen initial partners: Australia, Brunei, India, Indonesia, Japan, the Republic of Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand, and Vietnam. These countries included and those who will join this framework in the future, as President Biden suggested, are signing up to work toward an economic vision: "the vision for an Indo-Pacific that is free and open, connected and prosperous, and secure as well as resilient, where our economic growth is sustainable and inclusive" (White House 2022b).

During his attendance at the 78<sup>th</sup> Session of the Economic and Social Commission for Asia and the Pacific (ESCAP) in the same month, Chinese Foreign Minister Wang Yi highlighted China's determination to "advance high-quality Belt and Road cooperation, facilitate connectivity in the Asia-Pacific, and ensure safe and stable functioning of industrial and supply



chains in the region" (Ministry of Foreign Affairs of the People's Republic of China 2022). By suggesting that "the Asia-Pacific is home to China", Wang also promised China would "remain firm in participating in Asia-Pacific cooperation", "continue to keep in mind and strive for the interest of the Asia-Pacific and take real actions to contribute more to the long-term peace and security and sustainable development in the region" (Ministry of Foreign Affairs of the People's Republic of China 2022).

With divergent visions being offered by the United States and China for the region, it is worth noting that behind the demonstration of their divergent "worldviews" is a more serious message: The advancement of the "Free and Open Indo-Pacific Strategy" from President Donald Trump to President Joe Biden is a continuous effort made by the United States to counterbalance China's advocacy of the Belt and Road Initiative (BRI).<sup>1</sup> By calling China "the most serious long-term challenge to the international order and a test for US diplomacy", Antony Blinken, the Secretary of State under the Biden administration, highlighted the need for the United States to "defend and reform the rules-based international order - the system of laws, agreements, principles, and institutions that the world came together to build after two world wars" (Blinken 2022; Kelemen 2022).

This article aims to assess the Rules-Based International Order (RBIO) and understand Biden's IPS; particularly, it attempts to explore how the Indo-Pacific Economic Framework (IPEF) may impact China's BRI and how China is responding to the escalating strategic competition with the United States.

This study argues that the Indo-Pacific Strategy under Biden, especially the IPEF, represents a strategically important move by the Biden administration to fill the economic void left by the Trump administration by developing a strong economic presence in the Indo-Pacific in order to be able to out-compete China and its BRI and preserve the rules-based international order (RBIO). However, it also argues that RBIO is debatable as sometimes it is violated by the proponents, e.g., Iraq war. The authors further argue that while the IPEF is an important step forward, a long-term US genuine commitment to its implementation to counter China's BRI is essential.

From the Chinese perspective, although China does not seem to be deeply concerned with Biden's IPEF in their official statements, the country is concerned about the growth of IPEF, and it is in Beijing's interest to ensure that Biden's Indo-Pacific strategy would not drive the United States and the ASEAN countries closer economically. This, on the one hand, explains the efforts done by the Chinese government in its response to Biden's IPEF to further strengthen economic cooperation with the ASEAN region via the BRI. On the other hand, in showing their keenness to join Biden's IPEF, the ASEAN countries strongly desire to ensure a better balance of power in the region (Seiya 2022; Siow 2022).

The methodology of this research is primarily based on secondary literature and official documents. An in-depth analysis is done based on the data obtained.

This paper begins by providing a brief assessment of the rules-based international order built by the US and its partners. It is followed by a discussion of how President Biden is shaping

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<sup>1</sup>At its simplest, the "Belt and Road Initiative", which is formerly known as "One Belt One Road", is a massive infrastructure building and development project launched by the Chinese President Xi Jinping in 2013. The BRI has since become synonymous with Chinese foreign policy under Xi.

the Indo-Pacific strategy, concentrating on the emergence of the IPEF. Some analysis will be made on China's response to Biden's Indo-Pacific strategy, particularly the IPEF. The paper concludes with a discussion of the implications of an irreversible shift of deteriorating US-China relations, which is characterized by a fundamental clash between a determined US leadership aiming to preserve the rules-based international order and an increasingly confident Chinese leadership striving to expand its economic influence in the Indo-Pacific/Asia-Pacific region.

## THE US RULES-BASED INTERNATIONAL ORDER: A BRIEF ASSESSMENT

The origin of the "rules-based international order" that Secretary Blinken vowed to defend and reform could be traced back to the Second World War when American President Franklin D. Roosevelt and British Prime Minister Winston Churchill aimed to map out the features of a new international order that would replace the one that was being swept away by the destructive World War. Its nature is a liberal world order which was built by the United States and its partners and fleshed out through five main international institutions--the United Nations (UN), the International Monetary Fund (IMF), the World Bank (WB), the General Agreement on Tariffs and Trade (GATT), and the North Atlantic Treaty Organization (NATO) (Parsi 2021).

The emergence of such a new international order following the end of the Second World War can be attributed to two reasons. First, political leaders on both sides of the Atlantic were convinced that constructing a universal, generalist institution to replace the League of Nations was crucial for preserving world peace. Against this backdrop, the United Nations (UN) was founded. As the second international organization in the 20th century, the UN emphasizes ensuring collective security, formal equality of all states, and respect for national sovereignty among its Member States.

Second, the United States and its partners were keen to avoid the repetition of draconian economic protectionism in the form of closed economic blocks in the 1930s (Parsi 2021). Against this backdrop, the Bretton Woods Agreement was reached at a 1944 summit in New Hampshire, USA. This agreement established a system through which the gold standard was used to create a fixed currency exchange rate and facilitated the creation of the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD), known today as the World Bank.

Still, the problem is that there is no universally accepted or clear-cut definition of a rules-based international order, as there is no agreement on which rules and whose rules this rules-based international order should be. Such a rules-based international order can be debatable: who sets the rules? Do those rules represent or serve the interests of specific groups of nations? The established rules based on ethics, equality, and justice can enable a fair and just international order and the legitimate rights of all nations worldwide.

However, as G. John Ikenberry aptly suggested, the post-WWII international order is "a more general and long-standing set of ideas, principles, and political agendas" than just a creature of American hegemony (Ikenberry 2018, 9). Therefore, as this rules-based international order is not supposedly an American hegemonic project, it is implied that the emphasis of this international order should be placed on the sovereign equality of states under international law,

maintenance, and promotion of international peace as well as multilateralism. Marise Payne, the Australian foreign minister, has also suggested a list of “three fundamental parts of the multilateral system”, including:

- i) the rules that protect sovereignty, preserve peace and curb excessive use of power, and enable international trade and investment; ii) the international standards related to health and pandemics, transport, telecommunications, and other issues that underpin the global economy, and which will be vital to a post-Covid-19 economic recovery; and iii) the norms that underpin universal human rights, gender equality and the rule of law (Scott 2020).

Although the rules-based international order (RBIO) seems moral in concept and should be accepted, in reality, this is not being implemented by the RBIO proponents, the United States, and its allies. From a non-Western or Chinese perspective, it is a Western system since the Western countries led by the US set the rules. RBIO is pledged to respect a state’s sovereignty and human rights but is widely claimed to have been violated by the US and its allies in Iraq.

While China is expected to abide by this multilateral world order, leaders in Beijing do not see this international system as acceptable to China because it is being dominated by the United States economically, militarily, and politically (Mearsheimer 2019). China’s attempt to influence international norms, standards, and conventions is evidenced by the presence of Chinese nationals at the head of a wide range of UN agencies during the past few years. Chinese representatives lead four of the 15 specialized agencies and groups under the UN, including the Food and Agriculture Organization, the International Civil Aviation Organization, and the International Telecommunication Union. China has signed a Memorandum of Understanding to support the Belt and Road Initiative infrastructure projects with 30 UN agencies and institutions, including the UN Industrial Development Organization (Trofimov, Hinshaw, and O’Keeffe 2020). Therefore, in many ways, China has made strides in transforming the UN system “through a combination of deft coalition-building, strategically timed financial contributions, and narrative-shaping efforts” (Lee 2020).

In this context, the biggest challenge facing the United States and its partners in the coming decades “will not be China the rule-breaker, but China the rule-maker” (Leonard 2022). Since Beijing, from a US policy perspective, is gradually attempting to undermine the liberal international order created by the US and its allies, it is of utmost importance to Washington to pay closer attention to China’s growing assertiveness and influence on the world stage.

#### **THE US-LED INDO-PACIFIC STRATEGY UNDER JOE BIDEN: INDO-PACIFIC ECONOMIC FRAMEWORK**

Not unlike the Trump administration, the Biden administration, in its 2021 Interim National Security Strategic Guidance, stated that China “is the only competitor capable of combining its economic, diplomatic, military and technological power to mount a sustained challenge to a stable and open international system” (Biden 2021). The Annual Threat Assessment of the US Intelligence Community issued by the Office of the Director of National

Intelligence in February 2022 also highlighted that “China increasingly is a near-peer competitor, challenging the United States in multiple arenas-especially economically, militarily, and technologically - and is pushing to change global norms” (Office of the Director of National Intelligence 2022). This represents a growing consensus in Washington to get tough on China and a fundamental shift in Washington’s strategic posture *vis-a-vis* Beijing because, for the first time, China was defined as a “near-peer competitor” in US official documents (Zongyou and Yunhan 2021).

However, while the Biden administration’s attitude towards China is familiar to the Trump administration, Biden’s overarching approach towards China appears to be an attempt to combine a hard-line approach adopted by his predecessor with a stronger multilateralism approach to cooperate among allies and partners (Mousavizadeh 2022). As such, while emphasizing out-competing China and preserving a free and open Indo-Pacific region, the Biden administration also recognizes that there are still some issues that the US and China could cooperate with, such as climate change and the Covid-19 pandemic (Kuo 2022).

This new China strategy employed by the Biden administration is built on three pillars of “invest, align and compete”: investing at home in high-tech and other future-oriented industries, aligning efforts with allies and partners who oppose China’s vision of authoritarian-based development, and competing with China to counter Beijing’s drive to change the existing rules-based international order (Gerin 2022). With China being singled out by the US as “the only country with both the intent to reshape the international order and, increasingly, the economic, diplomatic, military and technological power to do it” (Blinken 2022), being able to defend American interests and build a US vision for the future by competing with China is of utmost importance and urgency for Washington to reject Beijing’s vision and offer developing countries alternatives to China’s BRI (Johnson 2022).

With China attempting to pursue a sphere of influence and become the world’s most influential power, its coercion and aggression, according to the US government, is most acute in the Indo-Pacific region. However, it is important to note that the objective of the Biden administration is to shape the strategic environment for the United States and its allies and partners to operate by building a balance of influence in the world rather than changing China (White House 2022c).

In this context, the Indo-Pacific strategy employed by President Biden is different from his predecessor in two unique ways. First, Biden’s Indo-Pacific strategy is focused more on cooperation with regional allies and partners. This is evidenced by Biden’s endorsement of the EU Strategy for Cooperation in the Indo-Pacific and increased European engagement in the Indo-Pacific region (White House 2022a). Second, it emphasizes “new approaches to trade that meet high labor and environmental standards”, which is known as the Indo-Pacific Economic Framework (IPEF) (White House 2022b; United States Institute of Peace 2022). As “a 21st century economic arrangement”, IPEF, according to the White House, is designed to tackle the following:

21st-century economic challenges ranging from setting the rules of the road for the digital economy to ensuring secure and resilient supply chains, to helping make the kinds of major investments necessary in clean energy infrastructure and the clean energy transition, to raising

standards for transparency, fair taxation, and anti-corruption (White House 2022d).

In many ways, IPEF is the attempt of the United States to reinstate its economic leadership and counter China's increasing economic and political influence in the Indo-Pacific region (Forough 2022). In the light of the newly-signed Regional Comprehensive Economic Partnership (RCEP) between China, all ASEAN countries, and some close US allies (Australia, Japan, New Zealand, and South Korea) in November 2020, "Beijing will continue to promote the Belt and Road Initiative (BRI) to expand China's economic, political, and military presence abroad" (Office of the Director of National Intelligence 2022).

Indeed, there is every reason why the US feels the urge to switch back to its Indo-Pacific strategic pivot: the United States is outside of most economic agreements in the Indo-Pacific region, including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), Regional Comprehensive Economic Partnership (RCEP) and Digital Economy Partnership Agreement (DEPA) since its withdrawal from the Trans-Pacific Partnership (TPP) in 2017. Therefore, in this context, this initiative taken by the Biden administration is especially important because the United States never implemented a positive economic strategy for the region following its TPP withdrawal in 2017 (Townshend, Patton, Corben, and Warden 2021).

By attempting to engage the region economically, the Biden administration has established a new, loosely defined regional economic bloc that identifies four major areas: improving supply chains, expanding clean energy, fighting corruption, and advancing digital trade. While the pact is meant to counter China's increasing influence in the region, IPEF allows countries to sign on to individual provisions and initiatives without fully participating in all of those policy areas. This suggests that the Biden administration is sensitive to the reluctance of the Asian countries in the region to choose between the US and China (Harvard Kennedy School Ash Center for Democratic Governance and Innovation n. d.; Strangio 2022).

### **BIDEN'S INDO-PACIFIC ECONOMIC FRAMEWORK: WHAT DOES IT MEAN FOR CHINA?**

In an attempt to reduce the economic influence of China's BRI, President Trump initiated the Indo-Pacific strategy in 2017. His strategy's primary focus was strengthening the "Quad" and building security and military alliances among like-minded countries in the Indo-Pacific region (White House 2017). However, fostering closer economic partnerships among the Indo-Pacific countries was not a priority in Trump's Indo-Pacific strategy. The fact that the whole budget of the "Indo-Pacific Economic Vision" launched by the Trump administration, for instance, was only \$115 million means that Trump's economic vision could hardly be considered a counterweight to China's BRI (US Mission to ASEAN 2020).

Realizing the growing economic influence of China in the Asia-Pacific/Indo-Pacific region, the Biden administration has adjusted the US-led Indo-Pacific strategy by placing greater emphasis on comprehensive regional economic cooperation under the newly built Indo-Pacific Economic Framework (IPEF) (Banerjee 2022). This shift from military strategy to economic strategy (IPEF) is a strategically significant move taken by the Biden administration to counteract China's BRI since there is every reason for China to become anxious: IPEF is a more inclusive and

comprehensive strategy employed by the Biden administration for the sake of uniting the economically significant countries in the region (Lew et al. 2021). Nevertheless, the Council on Foreign Relations (CFR) opined that rather than just pointing fingers at the BRI or daunting other countries not to join China's BRI, Biden's Indo-Pacific strategy has to offer something concrete and appealing to the Member States of the Indo-Pacific region. The Council also suggested that the economic pact has to be achieved multilaterally, not unilaterally (Zongyou and Yunhan 2021).

Given that China has extensive economic interactions and stakes in these new IPEF Member States, there is a real possibility that the new US trade pact may make those countries in the region less economically dependent on China and ultimately remove China from the world's top economic position. Perhaps not surprisingly, China considers the pact a threat to its regional dominance and termed IPEF "economic NATO" (Varma 2022; Deccan Herald 2022). According to some Chinese analysts, if IPEF is adopted, it is unlikely to have any noticeable impact on Chinese economic interests immediately. In light of the China-led cooperative mechanisms such as the Regional Integrated Economic Program (RCEP) and the BRI, Chinese policy experts argue that China is better integrated with the countries in the region than the United States (Zongyou and Yunhan 2021).

For instance, many ASEAN countries rely on China for raw materials and intermediate inputs to make finished products, which are exported to the US or European Union (EU). Since 2009, China has been ASEAN's largest trading partner, as ASEAN's exports to China grew at an average annual rate of 10.4% from 2010 to 2019. Since then, China's economic cooperation with the ASEAN region has been gradually deepening, with trade between China and the ASEAN countries growing by 48% in the first six months of 2021, reaching \$140 billion (Association of Southeast Asian Nations n.d.). This accounts for 15% of China's global trade (Singh 2021). While the trade relationship between China and RCEP countries is thriving, close US allies like South Korea and Japan are also inclined to strengthen economic cooperation with China under RCEP (Global Times 2022).

While ASEAN countries were not interested in joining the Indo-Pacific strategy under Trump, Biden has successfully incorporated those countries into the IPEF (Townshend, Patton, Corben, and Warden 2021; Bowie 2022). According to Wang Yiwei, Director of the Institute of International Affairs at the Renmin University of China, some ASEAN members joined IPEF because the US government and technology companies have maintained significant control over many important high technologies such as chips and software, and many of those ASEAN members are concerned about possible US export controls on sales to them (Townshend, Patton, Corben, and Warden 2021; Global Times 2022). However, Gu Xiaosong, dean of the ASEAN Research Institute of Hainan Tropical Ocean University, suggested that IPEF will bring some economic benefits to ASEAN members with investment and trade. Vietnam, for example, could enjoy some "policy bonuses" under the pact, as it helps strengthen its textile and digital exports to the US. Vietnam, "as a country with a large market, and Malaysia, as a country that is good at chip production, could be used by the US to develop relevant supply chains to offset China's supply chains", as suggested by Gu (The Week 2022).

Nevertheless, the United States and its allies have lagged significantly behind China in terms of economic ties with countries in the Indo-Pacific region. As discussed earlier, China has



become a dominant trading partner with ASEAN since 2009, accounting for over 20% of Southeast Asian trade, which is far ahead of the US (Chen and Chen 2022). Therefore, Beijing is convinced that Biden's new economic strategy is Washington's attempt to force more countries to take sides with the US. Rather than bringing economic advantages to the countries in the region, Biden's IPEF, in the eyes of Beijing's leadership, will trigger more division and instability among the ASEAN members by pushing the region "over the edge of an abyss" (Global Times 2022b). Therefore, perhaps not surprisingly, while Joe Biden made his first trip to Asia as US President, Chinese Foreign Minister Wang Yi criticized the US "for creating the IPS to form small cliques in the name of freedom and openness", and highlighted that "[f]acts will prove that the so-called 'Indo-Pacific strategy' is essentially a strategy for creating divisions, a strategy for inciting confrontation, and a strategy for destroying peace" (Bloomberg News 2022).

As the Chinese Foreign Minister concluded, "The US attempt to form closed and exclusive cliques", as the Chinese Foreign Minister suggested, "is doomed to fail" (Bloomberg News 2022; Xinhua 2022). It is not too difficult to imagine that Beijing perceives the pact as a threat to its regional dominance. Therefore, along with promising more opening up to the ASEAN countries, Beijing emphasized offering higher cooperation to the Indo-Pacific region with better Belt and Road Initiative (BRI) projects and investments to neutralize the US new economic pact IPEF (NDTV 2022). While Beijing seems critical and dismissive of Biden's Indo-Pacific strategy, especially the IPEF, gauging Chinese leaders' perceptions and opinions concerning China's counter-strategy to the US can be difficult because there are few tangible ways to measure the opinions of Beijing's leaders. Hence, apart from judging the remarks of Chinese government officials, opinions expressed by Chinese scholars are considered important because they can reflect and even exert their influence in the decision-making processes of the Chinese government.

According to some Chinese scholars, the Indo-Pacific strategy will harm China's security environment, as an increased US participation in China's neighborhood could produce a "four-seas linkage" conundrum, bringing together tensions over the South China Sea, the Taiwan Strait, the East China Sea, and the Yellow Sea (the Korean peninsula) (Grandview Institution 2018). Furthermore, Washington's advocacy of the Indo-Pacific strategy would result in ongoing and escalated regional arms contests, notably in naval weaponry (Wei 2013).

On the other hand, some other Chinese experts argue that Biden's Indo-Pacific strategy will have little impact on China's BRI because IPEF is still conceptual and has few real substances. These scholars suggested there are some flaws and weaknesses in the implementation of Biden's strategy. First, critics argue that the US lacks the strength and resources to unilaterally pursue the Indo-Pacific strategy (Trubowitz and Harris 2019). Second, the Indo-Pacific strategy is just a regional policy initiative that lacks a distinct economic character and the ability to counter China's expanding economic power (Zhang 2018; Ye 2015). Third, other countries in the region are not necessarily staunch supporters of the US-led Indo-Pacific strategy: they could not present a unified stance on the future of the regional order, its capabilities, and its desire to engage.

However, using carrots and sticks, another group of Chinese scholars is convinced that China could foster closer bilateral relations with countries in the region, thereby undermining Biden's Indo-Pacific strategy and its intent to contain China's rising influence. Therefore, to



divide and disrupt US alliances and partners in the region, China has actively adopted coercive and reassuring tactics against specific countries (Zhang 2018).

In a nutshell, as the Biden administration's Indo-Pacific Economic Framework is still evolving, there have been no concrete policy measures taken by the Chinese government in responding to Biden's Indo-Pacific strategy. Nevertheless, while the US Indo-Pacific strategy under Biden has not significantly impacted China's BRI so far, the inevitable clash between China's BRI and the US-led Indo-Pacific strategy will remain a key characteristic of the long-term strategic competition between Washington and Beijing.

## CONCLUSION

After exploring the relationship between the US Indo-Pacific strategy, China's BRI, and the escalating US-China strategic competition, there are three important conclusions to draw from this analysis. The first is that the ultimate objective of the US Indo-Pacific strategy from Trump to Biden is to ensure that America would retain its leadership role in enforcing the rules-based international order. This explains the US's continued efforts, under Presidents Trump and Biden, to counterbalance China's promotion of the Belt and Road Initiative (BRI) by introducing the Indo-Pacific strategy, as the US feels compelled to challenge China's geoeconomic dominance through the BRI.

The second conclusion is that the effectiveness of the US Indo-Pacific strategy under Biden as an economic counterweight to China's BRI hinges on the genuine long-term commitment of the US leadership to conducting a multilateral and comprehensive Indo-Pacific strategy. While the Biden administration has been trying to engage with the countries in the region economically, ASEAN countries tend to maximize their economic benefits and minimize security threats by integrating China's BRI with the US-led Indo-Pacific strategy (Wu and Colombage 2019). Therefore, guaranteeing the endorsement of allies and partners in the region in constructing a US-led regional economic community is fundamental for the US to maintain its influence in the Indo-Pacific region.

The third conclusion to draw is that although the Chinese experts and officials tend to be critical and dismissive of Biden's IPEF, Beijing's reaction to Biden's efforts to particularly pursue a further closer economic partnership with and provide more economic incentives to countries in the Indo-Pacific/Asia-Pacific indicate that China sees the potential impact of IPEF on Beijing's continuous economic influence as an ongoing concern. The fact that the Biden administration has proposed more than \$25 billion in spending, including \$15 billion of proposed investment in the infrastructure sector and \$9 billion for strengthening US defense preparedness in the Indo-Pacific (The Hindu 2023), is indicative of Washington's determination to develop its economic presence in the region by filling up the economic void left by the Trump administration. Consequently, the rivalry between Biden's IPEF and China's BRI raises the risk of rapid and irreversible damage to US-China relations, which will ultimately lead to new groupings in the region, leading to a new cold war or new world order.

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